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Monday
March 12, 1990

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: Duke University,
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RESERVATIONS: 919-684-3030.

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WHERE: State Office Building Auditorium,
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RESERVATIONS: Call the Utah Department of Administrative Services, 801-538-3010.

WASHINGTON, DC

WHEN: March 29, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

RIN 3206-AB75

Civil Service Retirement System—Civil Service Retirement Spouse Equity Act Implementation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is amending its interim rules implementing the Civil Service Retirement Spouse Equity Act of 1984, as amended (CSRSEA). The interim rules regulate survivor elections, survivor annuities based on those elections, special survivor annuities for former spouses under CSRSEA, survivor annuities payable to widows and children, lump-sum death benefits, court orders affecting retirement benefits, and refunds of civil service retirement contributions. These amendments to the interim rules make several changes to clarify the current interim regulations, to eliminate ambiguous provisions, or to correct procedures that experience in implementing CSRSEA has demonstrated are unworkable. The changes relating to court orders affecting retirement or survivor annuity benefits are limited to updating terminology and interpretive guidelines.

DATES: Interim rules effective April 11, 1990; comments must be received on or before May 11, 1990.

ADDRESSES Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street NW., Washington, DC.

Send court orders awarding survivor annuity benefits under subpart Q of part 831 to Allotment Section, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-4682.

SUPPLEMENTARY INFORMATION: On May 13, 1985, we published (at 50 FR 20064) interim regulations implementing the retirement provisions of CSRSEA, Pub. L. 98-615. These regulations restructured the existing regulations concerning the subjects covered by the Act, specifically civil service retirement survivor annuities, court orders affecting civil service retirement benefits, and lump-sum payments (employee refunds and lump-sum death benefits) under the Civil Service Retirement System.

On September 8, 1986, we published (at 51 FR 31927) interim regulations amending our interim regulations of May 13, 1985, to implement the changes in CSRSEA made by the the Federal Employees Benefits Improvements Act of 1986 (FEBIA), Public Law 99-251. These interim regulations also contained changes to the interim regulations of May 13, 1985, based on comments received in response to the interim regulations of May 13, 1985, and our operational experience under those regulations.

The current interim regulations do not address eligibility for multiple survivor benefits and the resulting problems associated with elections between benefits. Because of the changes in the interim regulations to address these eligibility and election problems, we decided that an additional comment period would be appropriate. The basis for these changes as well as their effect is discussed after the discussion of the comments on the current interim regulations and the changes required by the enactment of Pub. L. 100-238.

1. Changes Based on Public Law 100-238

Section 127 of Pub. L. 100-238, changed the requirements for a former spouse to qualify for a survivor annuity under section 4(b) of CSRSEA. This legislation extended the application deadline to May 7, 1989. It also restricted eligibility to former spouses who attained age 50 before May 8, 1987. In addition, former spouses divorced after May 7, 1987, cannot qualify for this benefit unless no other person is eligible for an annuity as a current spouse, former spouse, or the beneficiary of an insurable interest election. Sections 831.619 and 831.622 have been amended to reflect these changes.

2. Comments on Interim Regulations

Eleven comments on the interim regulations were received in response to the May 13, 1985 request for comments. Several of those comments were adopted in the September 8, 1986 amendments to the interim regulations. Two additional comments were received in response to our request for comments on the September 8, 1986 amendments to the interim regulations.

Many of the comments addressed provisions that were changed by legislation after those regulations were published. Several commenters suggested editorial changes. Two commenters were pleading for personal relief beyond the scope of the enabling legislation.

One commenter suggested that § 831.605(c) state whether the election should be expressed in terms of dollars or as a percentage of the retiree's annuity. The election may be stated in terms of: (1) A percentage of the retiree's annuity, (2) a percentage of the available survivor annuity, (3) a base amount of the retiree's annuity (55 percent of which will be the survivor annuity), or (4) a dollar amount for the survivor annuity. Regardless of the method used in the election, we must express the election as a base amount (method 3) to compute the initial amount of the reduction. Thereafter, the potential survivor annuity and reduction in the employee's annuity are affected by cost-of-living adjustments.

One commenter questioned § 831.606(i). Section 831.606(i) does not permit a retiree to end an insurable interest reduction to provide for a former spouse in order to elect a reduced annuity to provide a former spouse annuity. Such an election is permitted for a current spouse under certain conditions by § 831.606(h). We explained this distinction at 50 FR 20065, May 13, 1985, stating:

> Although revised section 8339(j)(5)(B) of title 5, United States Code, authorizes continuation of an annuity reduction to provide a former spouse annuity (after the death or remarriage of the former spouse) for the purpose of providing a current spouse annuity, nothing in CSRSEA authorizes a corresponding continuation to benefit a

former spouse after the death of a current spouse.

One commenter objected to § 831.606(j) that prohibits designation of contingent beneficiaries of an insurable interest annuity. Contingent beneficiaries are prohibited by section 8339(k)(1) of title 5, United States (Code. That section authorizes naming "an individual" as beneficiary of an insurable interest election. In addition, the statutory formula for determining the insurable interest reduction does not contemplate multiple beneficiaries.

One commenter suggested that § 831.607 require additional information on the form for spousal consent to receive less than maximum survivor annuity. The additional information requested would explain to the spouse how much was being surrendered by consenting to the election. Some of the information, such as the amount of the potential survivor benefit, is not available at the time a retirement application is filed. However, to impress upon the spouse the importance of the action being undertaken, we require that the form be signed before a notary public or some other public official.

One commenter objected to a time limit for changing an election under § 831.611. The commenter suggested that one change of election per year be permitted. Section 8339 (j) and (k) of title 5, United States Code, provides that elections with respect to current and former spouse annuities are irrevocable.

One commenter raised two questions about § 831.618(a)(2) and (c). The first comment was that the regulatory language required the birth of a child to the marriage in order to fulfill the marriage duration requirement, thereby excluding adoptive children from fulfilling the requirement. The statute requires that the child be the "issue" of the marriage. The legal term "issue" does not include adopted children. We believe that the regulatory language is consistent with the statute. The other question was whether the child must be living to fulfill the marriage duration requirement. A deceased child (who was born alive), or a child born after the death of the employee, Member, or retiree (as long as the child is born alive), fulfills the marriage duration requirement. In the latter case, the current spouse annuity begins when the child is born, rather than on the day after the date of death of the employee, Member, or retiree because the spouse has no title to benefits before the birth of the child.

One commenter questioned the source of funding for benefits under § 831.622. No benefits under that section are funded through payments by retirees or former spouses, or the Civil Service Retirement and Disability Fund. Section 4(e) of CSRSEA provides that benefits under § 831.622 are funded by money not otherwise appropriated in the United States Treasury.

Several commenters questioned the portion of § 831.625 that provides that we will not reinstate a former spouse's survivor entitlement if the former spouse's remarriage before age 55 is terminated or annulled. This provision was fully explained when we issued the May 13, 1985 interim regulations. At that time, we stated:

> Since no statutory provision permits reinstatement of former spouse annuities, paragraph (d) provides that remarriage permanently extinguishes them. The solemnization of the remarriage is the event terminating the former spouse's entitlement. Accordingly, even if the remarriage is later annulled the entitlement is not reinstated. This rule is necessary for essentially the same policy reasons cited by the Missouri Court of Appeals when finding that alimony should not be reinstated following annulment of a remarriage. In *Glass* v. *Glass* 546 S.W.2d 738 (Mo. App. 1977), the court supported its decision on the following policy considerations:
>
> (1) A former husband is entitled to rely on the remarriage ceremony of the former wife to recommit assets previously used for alimony obligations to her. (2) Unless the remarriage ceremony is taken as conclusive, any latent grounds for annulment between the remarried spouse and her new husband may remain suspended until the offended spouse seeks annulment, so that the former husband's alimony obligations may never be certainly determined. (3) Even though both former spouses may be innocent, the more active of the two (the one whose remarriage is later annulled) should bear the loss from the misconduct of a stranger. (At 741.)
>
> Similar policy considerations apply in the context of the former spouse's annuity entitlements. First, the retiree is entitled to rely on the remarriage ceremony to provide a current spouse annuity for a subsequent spouse. Second, unless the remarriage is taken as conclusive, any latent grounds for annulment could prevent a current spouse's entitlement from becoming certain. Third, the spouse whose marriage is annulled should bear the loss rather than the spouse with no involvement whatsoever. (50 FR 20067, May 13, 1985.)

One commenter questioned our use of this alimony analogy asserting that the former spouse had property rights in the former spouse annuity. The alimony illustration is appropriate because alimony, like a former spouse annuity, terminates upon remarriage. Property rights, unlike a former spouse annuity, do not terminate because of remarriage.

One commenter objected to the complexity of the interim regulations. CSRSEA, as amended, is an extremely complex piece of legislation. This problem is aggravated by its varied effective dates for different provisions and its special retroactive provisions covering limited classes of potential claimants. Considering the complexity of the basic legislation that these regulations implement, we cannot produce simple regulations that will adequately implement the statute.

3. Elections Between Survivor Benefits

These regulations add several provisions concerning elections between survivor benefits. Specific provisions are discussed below in connection with the sections that they are modifying. However, certain underlying principles that affected our resolution of these election problems should be explained.

First, we consider multiple survivor benefits based on the service of one employee. In many situations involving multiple survivor benefits based on the service of one employee, the statute is not as specific as we would have preferred for limiting a current or former spouse to one survivor annuity based on the service of a single employee. A few of the combined benefits (e.g., current spouse annuity for a spouse who is also the beneficiary of an insurable interest election) are expressly prohibited by statute, but the statute is silent on other combinations. Congress did not, in our view, intend to allow one person to receive multiple benefits based on the service of one employee in any situation.

In preparing regulations for adjudicating cases involving multiple survivor annuities based on the service of one employee, we sought an approach that provided decisional rules that are reasonable, consistent, and simple for adjudicating all multiple survivor annuity situations. Accordingly, we sought three characteristics in possible solutions for adjudicating cases involving possible multiple survivor annuities based on the service of one employee. These characteristics are:

1. Payment of multiple survivor annuities to the same person based on the service of one employee is never permitted.
2. The claimant is entitled to receive the largest of the annuities.
3. The claimant is entitled to the most favorable health benefits enrollment under any of the annuities, regardless of which annuity is actually paid.

We considered the entire class of cases that includes all situations in which a former spouse meets the statutory requirements for a survivor annuity under section 4(b)(1)(B) or 4(b)(4) of CSRSEA (5-criteria benefits) and another benefit, regardless of the

order in which title to those benefits was perfected. Three features distinguish these cases from those not involving 5-criteria benefits. Five-criteria benefits:

—Always equal the maximum possible benefit;
—Are provided without cost to the retiree; and
—Are financed by General Revenues rather than by the Retirement Fund.

These characteristics led us to the decisional rule that in any case in which a former spouse is entitled to a 5-criteria benefit, the 5-criteria benefit is paid.

Administration is simplified by avoidance of mixed benefits; i.e., benefits which are authorized under different provisions of law. Preventing mixed payments under different statutory provisions is especially important when the 5-criteria benefits are involved because those benefits are funded differently than other benefits. Because the 5-criteria benefit is always the maximum, payment of the 5-criteria benefit whenever it is available prevents situations in which mixed payments are made under more than one provision.

The issue of cost to the retiree is slightly more complicated. No statutory provision authorizes the cancellation of a previously elected benefit or elimination of the reduction for a court-awarded benefit when the former spouse qualifies for the 5-criteria benefit. Accordingly, these reductions should continue.

On the other hand, nothing is gained by permitting a former spouse annuity election after the former spouse has already qualified (i.e., has filed an application and met all other requirements) for the 5-criteria benefit. Such an election will not be permitted. (In determining whether an election was filed after establishment of entitlement to a 5-criteria benefit, we will compare the date of receipt of the 5-criteria application to the date when the election would have become effective).

Applying this approach to cases involving 5-criteria benefits, we established the following decisional rules.

Court-awarded former spouse annuity and 5-criteria benefit (one divorce)—This combination arises whenever a State court (in terminating the marriage of a pre-May 7, 1985 retiree) awarded a former spouse annuity to a former spouse who meets the age and marriage duration requirement for a 5-criteria benefit and whose marriage is terminated between May 6, 1985, and May 8, 1987. The former spouse will be paid the 5-criteria benefit. As required by section 8339(h)(2) of title 5, United States Code, the retiree's annuity reduction will continue. The former spouse is entitled to health benefits coverage provided application is made within the time limits associated with either annuity entitlement.

Five-criteria benefit and court-awarded former spouse annuity (two divorces)—This combination arises when a former spouse who has qualified for a 5-criteria benefit remarries the retiree after age 55, and in a subsequent divorce decree is awarded a court-awarded former spouse annuity. This situation differs from the previous one only because in this situation the court-awarded entitlement was established later. That difference has no effect. The former spouse will be paid the 5-criteria benefit. As required by section 8339(h)(2) of title 5, United States Code, the retiree's annuity will be reduced. The former spouse is entitled to health benefits coverage provided application is made within the time limits associated with either annuity entitlement.

Survivor annuity as the beneficiary of insurable interest election and 5-criteria benefit—This combination arises whenever a pre-May 7, 1985 retiree had elected an insurable interest annuity to benefit a former spouse who later qualifies for a 5-criteria benefit based on a divorce between September 14, 1978, and May 8, 1987, if the retiree did not elect to replace the insurable interest benefit with a former spouse annuity under section 4(b)(1)(A) of CSRSEA. In this situation the insurable interest entitlement will always be established first. The retiree's annuity reduction will continue unless the former spouse loses entitlement under the insurable interest election. The former spouse will be paid the 5-criteria benefit. If the former spouse loses entitlement to the 5-criteria benefit (by remarriage before age 55), the insurable interest annuity will be paid provided the insurable interest reduction continues until the retiree's death. The former spouse is entitled to health benefits coverage provided application is made within the time limits associated with the 5-criteria benefit.

Five-criteria benefit and elected former spouse annuity—This combination arises when a former spouse who has qualified for a 5-criteria benefit remarries the retiree after age 55, and the retiree after a subsequent divorce elects to provide a former spouse annuity. The former spouse will be paid the 5-criteria benefit. The election cannot provide additional benefits and is therefore void. No annuity reduction is taken. The former spouse is entitled to health benefits coverage provided application is made within the time limits associated with the 5-criteria benefit.

Five-criteria benefit and current spouse annuity—This combination arises when a former spouse who has qualified for a 5-criteria benefit remarries the retiree after age 55, and the retiree elects to provide a current spouse annuity for that spouse. We recognize that the remarriage does not alter a former spouse's legal status as a former spouse, and to provide a consistent rule, we must pay the 5-criteria benefit. The later election to provide a current spouse annuity cannot provide additional benefits and is therefore void. No annuity reduction is taken. Health benefits coverage is provided (including the government share) if the spouse is eligible to continue enrollment as a family member after the retiree's death. Otherwise, health benefits coverage is available as a former spouse provided application is made within the time limits associated with the 5-criteria benefit.

Other situations do not involve 5-criteria benefits. Some of these cases include situations in which a former spouse qualifies for an insurable interest benefit and either an elected or court-awarded benefit. Whether the former spouse benefit is elected or court-awarded results in substantial differences.

Court-awarded former spouse annuity and survivor annuity based on an insurable interest election—This combination arises when a retiring employee elects an insurable interest annuity to benefit a former spouse who has been awarded a former spouse annuity by court order. If the insurable interest benefit is larger, then the insurable interest benefit would be paid and the court-awarded benefit would provide contingent coverage in case eligibility for the insurable interest benefit is lost. If the court awarded benefit is larger, the insurable interest election is void because it is contrary to the court order. (Of course, in the similar situation in which a retiree elects to provide a former spouse annuity that is smaller than a court-awarded former spouse annuity, the election is also void as provided in § 831.605(c) or § 831.612(b) of title 5, Code of Federal Regulations.) The retiree's annuity reduction is the reduction appropriate for the benefit in effect. If a valid insurable interest election is made (i.e., the insurable interest election would provide the larger benefit), health benefits coverage is available as a former spouse if elected under the time limits applicable to either benefit.

Otherwise, health benefits coverage (as a former spouse) is available if elected within the time limits applicable to the court-awarded benefit.

Survivor annuity based on an insurable interest election and elected former spouse annuity—This combination arises when a retiring employee elects an insurable interest annuity to benefit a former spouse and also elects to provide a former spouse annuity for that former spouse. A retiring employee must choose which election to make and cannot make both. The reduction in the retiree's annuity will be based on the benefit chosen. Former spouse health benefits coverage is available under either election if timely application is made.

Section 8339(j)(5) (C) and (k) of title 5, United States Code, prohibits a current spouse from receiving both a current spouse annuity and a survivor annuity as the beneficiary of an insurable interest election. Congress did not intend CSRSEA to allow an individual to receive multiple survivor benefits as a former spouse that would not be available had the divorce never occurred. CSRSEA was intended to preserve the reasonable expectations of former spouses that rights acquired during marriage would not be lost as a result of a divorce. This restriction can be seen throughout CSRSEA. For example, section 8341(h) makes ineffective State court orders that attempt to award former spouse annuities to former spouses who have waived entitlement to a current spouse annuity. Similarly, the effective date language in section 4(a)(1) of CSRSEA provided that State court awards of former spouse annuities to former spouses of retirees who retired before May 7, 1985, could be honored only if a survivor annuity had been elected to benefit that former spouse.

Court-awarded former spouse annuity and current spouse annuity—This combination arises when a former spouse who has been awarded a partial former spouse annuity by court order remarries the retiree after age 55, and the retiree who elects to provide a full or (larger partial) current spouse annuity. In these cases, the reduction and payment would be based on the election with the court-awarded benefit contingent on the loss of the elected benefit. Of course, the retiring employee can control the total amount of survivor annuity base not obligated by court order up to 55 percent of the retiree's annuity. Health benefits coverage is provided a spouse (includes government share) if eligible to continue enrollment as a family member after the retiree's death. Otherwise, health benefits coverage is available (as a former spouse) provided application is made within the time limits associated with the court-awarded benefit.

Although CSRS has never permitted multiple survivor annuities based on the service of one employee, the system permits multiple survivor annuities in some situations when the benefits are based on the service of different employees. Two statutory exceptions prohibit multiple survivor benefits in specific situations.

Section 8341(b)(3) of title 5, United States Code, provides in pertinent part:

> A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under [CSRS] or another retirement system for Government employees.

This provision requires a current spouse to elect between survivor annuities if either is based on a post-retirement marriage.

Former spouses should be treated similarly. Congress did not intend CSRSEA to allow an individual to receive multiple survivor benefits as a former spouse that would not be available had the divorce never occurred. The legislation was intended to preserve the reasonable expectations of former spouses that rights acquired during marriage would not be lost as a result of the divorce. This restriction can be seen throughout CSRSEA. For example, section 8341(h) makes ineffective State court orders that attempt to award former spouse annuities to former spouses who have waived entitlement to a current spouse annuity. Similarly, the effective date language in section 4(a)(1) of CSRSEA provided that State court awards of former spouse annuities to former spouses of retirees who retired before May 7, 1985, could be honored only if a spousal survivor annuity had been elected to benefit the same person.

Section 8341(g) of title 5, United States Code, provides:

> In the case of a surviving spouse whose annuity under this section terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored on the day the remarriage is dissolved by death, annulment, or divorce, if—
>
> (1) The surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled under [CSRS] or another retirement system for Government employees, by reason of the remarriage; and
>
> (2) Any lump-sum paid on termination of the annuity is returned to the Fund.

This provision requires a current spouse to choose between the restored annuity and any annuity based on the remarriage.

Restoration of former spouse annuities is not authorized by statute. Accordingly, no election problem can arise based on termination of the remarriage of a former spouse annuitant.

In the situations in which dual entitlement arose from the service of one employee, we provide the most favorable health benefits coverage under either entitlement. A similar rule is appropriate when an election is required between entitlements based on the service of more than one employee. This approach is consistent with the spirit of § 890.301(w) of Title 5, Code of Federal Regulations.

4. Changes to Clarify or Correct the Interim Regulations

The amendment to Subpart A specifies the method for computing interest on the deposits required to make an election under § 831.611(b). The methodology is the same as used to compute interest on other deposits required for survivor elections, except, as required by statute, the rate of interest for deposits involving elections under § 831.611(b) varies annually, rather than being fixed at the 6 percent rate applicable to other survivor elections. Section 831.105(h) states the methodology for other survivor elections and the new § 831.105(j) uses this methodology for deposits required for elections under § 831.611(b).

The amendment to § 831.601 clarifies that subpart F generally applies only to former employees and Members who retire under provisions of law permitting election of survivor annuities.

The amendment to § 831.605(c) clarifies that an election that violates that section by conflicting with a qualifying court order or exceeding the maximum total survivor annuity authorized is not entirely void, but is void only to the extent that it violates the statutory requirements repeated in this section. Whenever possible, the election would be adjusted rather than voided outright. For example, if we had a court order awarding a former spouse annuity equal to 25 percent of the employee's annuity, an election to provide a full survivor annuity to another former spouse would be void to the extent that it tried to award the 25 percent already awarded by court order, but would be a valid election of a former spouse annuity equal to 30 percent of the employee's annuity, the maximum amount remaining available for the election.

The amendment to § 831.605(d) clarifies that the reduction in the employee's annuity can terminate when the former spouse loses entitlement to a future survivor annuity by operation of the court order awarding the survivor annuity, as well as for the events already stated by that section, namely, the former spouse's remarriage before age 55 or death.

The amendment to § 831.605(f) clarifies that former spouse annuities can be elected for more than one former spouse, or a current spouse and one or more former spouses, as long as the total amount of the survivor annuities does not exceed the maximum permitted. When an employee provides more than one survivor annuity to current and former spouses, the reduction is based on the combined amount of all of the survivor annuities.

To understand § 831.606, the reader must understand the terms used in that section. Section 831.603 defines "insurable interest annuity" as "the recurring payments under CSRS to a retiree who has elected a reduction in annuity to provide a survivor annuity to a person with an insurable interest in the retiree." The person receiving the survivor annuity is called "the beneficiary of the insurable interest election."

The amendment to § 831.606(c) clarifies, as explained above, that one former spouse cannot receive both a former spouse annuity and a survivor annuity as the beneficiary of an insurable interest election from the same retired employee or Member. Section 8339(j)(5) (C) and (k) of title 5, United States Code, prohibits a current spouse from receiving both a current spouse annuity and a survivor annuity as the beneficiary of an insurable interest election. Congress did not intend CSRSEA to allow an individual to receive multiple survivor benefits as a former spouse that would not be available had the divorce never occurred. CSRSEA was intended to preserve the reasonable expectations of former spouses that rights acquired during marriage would not be lost as a result of a divorce. This restriction can be seen throughout CSRSEA. For example, section 8341(h) makes ineffective the provisions of State court orders that attempt to award former spouse annuities to former spouses who have waived entitlement to a current spouse annuity. Similarly, the effective date language in section 4(a)(1) of CSRSEA provided that State court awards of former spouse annuities to former spouses of retirees who retired before May 7, 1985, could be honored only if a survivor annuity had been elected to benefit that former spouse.

The amendment to § 831.606(h) corrects an oversight in that paragraph. A former spouse can lose entitlement to a former spouse annuity by the terms of the court order awarding the former spouse annuity, death, or remarriage before age 55. Interim § 831.606(h) mistakenly failed to include the first of these methods of terminating the former spouse's entitlement.

The amendment to § 831.606(k) corrects an oversight. The interim regulations failed to state that the insurable interest reduction in the retiree's annuity stops if the beneficiary of the insurable interest annuity dies. The amended section states that the retiree's annuity reduction stops effective on the first day of the month after the month in which the death of the beneficiary occurs.

The amendment to § 831.607 authorizes designated OPM employees to verify and witness spousal consent to an election not to provide the maximum survivor annuity. Under the prior interim regulation the spousal consent form had to be completed before a notary public or other official authorized to administer oaths. This requirement was intended to impress upon the spouse the importance of the action being taken, to minimize the opportunity for coercion, and to eliminate forged consent forms. In a limited number of cases, permitting designated OPM employees to substitute for a notary public will be more convenient to the retiring employee and spouse, as well as the Government, without jeopardizing attainment of any of those goals.

Interim § 831.608(b) failed to specify what we expected in a court determination supporting a request that we waive the spousal consent requirement for a retiring employee's election not to provide the maximum survivor annuity for the spouse. The revised paragraph states the specific findings that we expect to see in the court determination. These findings are intended to assure that the court affords due process to the spouse before the spouse's interest in a survivor annuity is waived.

The amendment to § 831.612(b) corrects several minor omissions in the interim regulations. Section 831.612(b)(2) has been amended to correct the survivor annuity rate payable to former spouses of retirees who separated before October 11, 1962. The corrected provision is similar to §§ 831.605(c) and 831.614(a). The amendment to § 831.612(b)(3) edits that language to clarify that the prescribed form need not be the same form used for elections under § 831.607(c), but the form used must contain the same information as the form required for elections under § 831.607.

The amendment to § 831.612(b)(4) and (b)(5) applies to elections to provide former spouse annuities a rule similar to the longstanding rule applicable to post-retirement survivor elections for a current spouse before CSRSEA. In these "old-law" cases, for a retiree who was married at the time of retirement, the survivor annuity provided for a spouse acquired after retirement cannot vary from the survivor annuity elected for the spouse at the time of retirement. This is another situation involving the general intent of CSRSEA that a current spouse without eligibility for survivor benefits cannot achieve greater rights merely by obtaining a divorce. This issue is discussed in more detail in connection with § 831.606(c). Section 831.612(b)(5) only applies to retirees who retired before May 7, 1985, had a survivor election in effect for the spouse involved on May 7, 1985, and were divorced from that spouse on or after May 7, 1985.

The amendment to § 831.612(d) eliminates the cross reference to § 831.605(d) for instructions on when the reduction in the retiree's annuity terminates. The amended paragraph makes no substantive change. Section 831.612(e) states the statutory formula for computing the reductions in the retiree's annuity for elections made under § 831.612.

Section 831.613 was revised to correct several minor omissions and eliminate ambiguities. The change in § 831.613(b)(2) clarifies that a retiree who was married at retirement and whose spouse consented under § 831.604 not to receive the maximum survivor annuity, but who divorces and later remarries that spouse, may not elect to provide a greater survivor annuity than was elected at retirement with that spouse's consent.

Section 831.613 (b)(3) and (b)(4) clarifies that no deposit is required unless the marriage lasts long enough for the spouse acquired after retirement to meet the marriage duration requirements for entitlement to a survivor annuity. Normally, the marriage must last at least 9 months to qualify. However, marriages of less than 9 months duration can qualify if a child is born of the marriage (or of a previous marriage of the same couple), if the couple was previously married and the combined length of all the marriages of the couple are at least 9 months, or if the retiree's death results from an accident within the meaning of § 831.618(d).

Although the deposit requirement does not attach until the marriage lasts long enough to qualify for a survivor annuity, the election is irrevocable as soon as OPM receives it.

Sections 831.615 and 831.616 restate the existing rules affecting children's survivor annuities. The language has been taken from the regulations governing the Federal Employees Retirement System, specifically, §§ 843.403 through 843.406 and 843.410 of title 5, Code of Federal Regulations.

Section 831.620 has been restructured to separate the general rule on commencing date of survivor annuities from the numerous special statutory exceptions. Paragraph (a) states the general rule that the annuity begins to accrue on the day after the date of death of the employee, Member, or retiree. Paragraph (b)(1) states the special statutory commencing dates that apply to current spouses. Paragraph (b)(2) states the special statutory commencing dates applicable to former spouse annuities.

The addition of paragraph (g) to § 831.621 is to include in the regulations the statutory rule for terminating the annuity reduction for a election made under that section. Similar provisions are included in §§ 831.605, 831.606, and 831.612.

Sections 831.621(h) and 831.622(e) provide that a former spouse cannot receive more than one survivor annuity based on the service of a single employee or Member. The rationale for this policy is discussed above. The basis for this approach is further illustrated in connection with § 831.622. As applied to § 831.622, Congressional intent not to allow multiple benefits to a former spouse based on the service of one employee or Member can be seen in the introductory language to section 4(b)(1)(B) of CSRSEA which limits eligibility for benefits under § 831.622 to former spouses not eligible for a former spouse annuity based on the retiree's election.

Generally, a surviving spouse or former spouse may receive more than one civil service retirement survivor annuity as long as the annuities are based on the service of different employees or Members. However, section 8341 of title 5, United States Code, provides two exceptions to that general rule by requiring an election between survivor benefits. Section 8341(g) of title 5, United States Code, prohibits receipt of a reinstated survivor annuity which terminated because of remarriage before age 55 and any survivor benefit based on the remarriage. Section 831.630(a) states this election requirement.

Section 8341(b)(3) of title 5, United States Code, requires an election between a survivor annuity based on a marriage to someone who was already a retiree at the time of the marriage and any other survivor benefit payable under CSRS or any other retirement system for Government employees. Section 831.630 (b) and (c) implements this election requirement. Two regulatory sections governing types of survivor annuities are not included on the list that can trigger an election requirement because both types require that the relationship be established prior to retirement. Insurable interest elections under § 831.606 are available only at the time of retirement. Former spouse annuities under § 831.622 require 10 years of marriage during periods of Federal employment. Neither of these annuities can trigger the election requirement. However, like any other annuity, they can be affected if another annuity triggers the election requirement. Some examples follow:

Example 1. Employee A dies and Spouse A receives a survivor annuity based on Employee A's service. After reaching age 55, Spouse A marries an active employee, Employee B. Upon Employee B's death, Spouse A is entitled to both annuities. However, if Employee B had been a retiree at the time of the marriage to Spouse A, Spouse A could receive only one of the survivor annuities.

Example 2. Spouse A is receiving two survivor annuities based on the service of deceased employees (the second marriage was after reaching age 55). Spouse A marries a retiree who elects a reduced annuity to provide a survivor annuity for Spouse A. The retiree dies a year later. Spouse A must choose whether to retain the combined survivor annuities of the deceased employees or to take instead the survivor annuity based on the service of the deceased retiree.

Example 3. Spouse A marries a retiree who elected a reduced annuity to provide a survivor annuity to Spouse A. The retiree dies a year later. After reaching age 55, Spouse A marries an employee. A year later the employee dies. Because one of the annuities is based on a postretirement marriage, Spouse A must elect which annuity to receive. The order of the marriages does not matter.

Section 831.630 also continues a long-standing interpretation that lump-sum payments of unpaid, accrued annuity due the employee and the employee's unexpended contributions are not included in "any other survivor benefit" within the meaning of that phrase as it is used in section 8341 (b) and (g), of title 5, United States Code. An election of such benefits and spousal annuity benefits is never required under CSRS. However, an election may be required between a CSRS survivor annuity and the FERS basic employee death benefit.

Example 4. Spouse A is receiving a current spouse annuity based on the death of a CSRS employee who dies in service. At age 40, Spouse A marries an employee covered by FERS causing the CSRS annuity to terminate for remarriage before age 55. A year later, the employee dies having served 6 years under FERS. Spouse A is entitled to the FERS retirement deductions plus either the reinstated CSRS annuity or the FERS basic employee death benefit, but not both.

The amendment to the definition of Associate Director is necessary to conform with a change in the position title. OPM no longer has an Associate Director for Compensation.

The guidelines for interpreting State court orders have been updated to respond to additional problems that have arisen since publication of the existing guidelines. Existing guidelines have been edited to improve clarity and new guidelines added to address ambiguities that we have discovered in recent orders.

We receive a substantial number of State court orders that have been drafted under the mistaken belief that the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 *et seq.*) applies to CSRS benefits. Sections 1003(b)(1) and 1051 of title 29, United States Code, exempt CSRS from ERISA, because CSRS is a "governmental plan" as defined in section 1001(23) of title 29, United States Code. Accordingly, we do not honor ERISA Qualifying Domestic Relations Orders (QDRO's) except to the extent that the law governing CSRS expressly authorizes compliance with State court orders. We will honor the orders to the extent permitted by CSRS. However, many provisions of ERISA QDRO's are not authorized under CSRS. Most significantly, a court cannot require that payments to the former spouse begin before the employee actually retires (i.e., begins to receive benefits) and, unless the order expressly provides that the former spouse is entitled to a survivor annuity, the payments to the former spouse cannot continue after the employee dies.

On page 15 of the report by the Committee on Post Office and Civil Service of the House of Representatives (H. Rept. No. 98–1054) on the bill which became CSRSEA, the committee stated that the regulations to implement the spousal notification requirement before

an employee could be paid a refund of retirement deductions should conform to the notification procedures that we had been using under pre-CSRSEA law when a retiring employee had to notify (rather than obtain consent from) a current spouse to elect less than the maximum survivor benefit. The amendments to § 831.2007 do this for the situations when OPM cannot obtain proof of delivery of the notification. These changes are intended to prevent a current or former spouse from evading a notice that a separated employee has applied for a refund of retirement deductions. When OPM has no reason to believe that the address provided by the employee is incorrect and that the former spouse has prevented delivery by failing to claim or refusing the notice when we send it by certified mail, notice will be sent by first class mail to complete the notification process. This was the procedure under 5 CFR 831.601(c)(1984) to which our regulations should conform.

The amendments to § 831.2009 correct three problems that we have encountered in processing State court orders affecting refund cases. Paragraph (e) has been added to specify exactly when an order must be received to affect a refund payment. Refund checks cannot be stopped instantly. Nor can we instantly associate a court order with a pending refund application. We process over 150,000 refund applications a year. When the current or former spouse notification form states that a court order was sent to us, we will wait a few days anticipating receipt of the order. However, in all other situations, we require a substantial time to alert our processing personnel that we have received a court order that must be associated with any future refund application. In the past, we have relied on § 831.1711(a)(3) for establishing when court orders must be received to affect refunds as well as annuity payments, but that section is designed for handling only the latter. Section 831.2009(e) provides a rule designed specifically for refunds.

Unfortunately, we are receiving an increasing number of forged or otherwise fraudulent notification forms. To the extent possible, we will take legal action against a former employee submitting such a fraudulent form. To impress upon refund applicants the importance with which we view this matter, we are requiring that a refund applicant's certification on current and former spouses be under oath before an appropriate official. We hope that this will reduce some of the fraud. We have also added § 831.2009(f) which provides that if the current or former spouse can demonstrate that harm resulted from the fraud, the current or former spouse's rights will be protected, and this section lists the elements that must be proven for the current or former spouse to show injury.

We continue to receive state court orders or other documents attempting to block refund payments. We are required by section 8342 of title 5, United State Code, to pay a refund when certain statutory requirements are met. We cannot stop payment except based on a court order that meets the statutory requirements for preventing payment of refunds under section 8342(j)(1)(B) of title 5, United States Code. Section 831.2009(g) states this rule and lists the statutory requirements that the order must meet.

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The regulations are effective upon publication to prevent harm to persons entitled to benefits. Delaying rulemaking would be contrary to the public interest because such a delay could require delayed payments. Although later payments could be retroactive to the date of entitlement, delay could seriously harm entitled persons with an immediate need for payment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired and former Government employees and their survivors and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

Accordingly, OPM is amending 5 CFR part 831 as follows:

PART 831—RETIREMENT

Subpart A—Administration and General Provisions

1. The authority citation for subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. In § 831.105, paragraph (j) is added to read as follows:

§ 831.105 Computation of interest.

* * * * *

(j) Interest under § 831.629 is compounded annually and accrued monthly.

(1) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between—

(i) The sum of one plus the interest rate set under § 831.105(g) raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and

(ii) 1.

(2) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (j)(1) of this section.

Subpart F—Survivor Annuities

3. The authority citation for subpart F of part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251.

4. Section 831.601 is revised to read as follows:

§ 831.601 Purpose and scope.

(a) This subpart explains the annuity benefits payable in the event of the death of employees, retirees, and Members; the actions that employees, retirees, Members, and their current spouses, former spouses, and eligible children must take to qualify for survivor annuities; and the types of evidence required to demonstrate entitlement to provide survivor annuities or qualify for survivor annuities.

(b) Unless otherwise specified, this subpart, except §§ 831.621 and 831.622 and the provisions relating to children's survivor annuities, only applies to employees and Members who retire

under a provision of law that permits election of a reduced annuity to provide a survivor annuity.

5. In § 831.605, the section heading, the introductory text of paragraph (c), the introductory text of paragraph (d), the introductory text of paragraph (f)(1), and paragraph (f)(2) are revised to read as follows:

§ 831.605 Election at time of retirement of a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

* * * * *

(c) An election under paragraph (a) or (b) of this section is void to the extent that it—

* * * * *

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

* * * * *

(f)(1) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section equals 2½ percent of the first $3600 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $3600, if—

* * * * *

(2) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section for employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $2400.

6. In § 831.606, paragraphs (c)(5) and (k)(3) are added and paragraphs (h)(1) and (3) are revised, to read as follows:

§ 831.606 Election of insurable interest annuity.

* * * * *

(c) * * *

(5)(i) A retiring employee or Member may not elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity and an insurable interest annuity to benefit the same former spouse.

(ii) If a retiring employee or Member who is required by court order to provide a former spouse annuity elects an insurable interest annuity to benefit the former spouse with the court-ordered entitlement—

(A) If the benefit based on the election is greater than or equal to the benefit based on the court order, the election of the insurable interest annuity will satisfy the requirements of the court order as long as the insurable interest annuity continues.

(B) If the benefit based on the election is less than the benefit based on the court order, the election of the insurable interest annuity is void.

(iii) An election under § 831.612 of a fully reduced annuity or a partially reduced annuity to benefit a former spouse by a retiree who elected and continues to receive an insurable interest annuity to benefit that former spouse is void.

* * * * *

(h) (1) Except as provided in § 831.605(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse remarries before age 55, dies, or loses eligibility under the terms of the court order, and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.612 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's remarriage, death, or loss of eligibility under the terms of the court order, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the event causing the former spouse to lose eligibility.

* * * * *

(3) When a former spouse receiving an annuity under section 8341(h) of title 5, United States Code, loses eligibility to that annuity, a beneficiary of an insurable interest annuity who was the current spouse at both the time of the retiree's retirement and death may, within 2 years after the former spouse's death, remarriage, or loss of eligibility under the terms of the court order, elect to receive a current spouse annuity instead of the annuity he or she had been receiving. The election is effective on the first day of the month following the event causing the former spouse to lose eligibility.

* * * * *

(k) * * *

(3) An annuity reduction under this section terminates on the first day of the month after the beneficiary of the insurable interest annuity dies.

7. In § 831.607, paragraph (d) is added to read as follows:

§ 831.607 Election of a self-only annuity or partially reduced annuity by married employees and members.

* * * * *

(d) The form described in paragraph (c) of this section may be executed before a notary public, an official authorized by the law of the jurisdiction where executed to administer oaths, or an OPM employee designated for that purpose by the Associate Director.

8. In § 831.608, paragraph (b) is revised to read as follows:

§ 831.608 Waiver of spousal consent requirement.

* * * * *

(b) The spousal consent requirement will be waived based on exceptional circumstances if the employee or Member presents a judicial determination finding that—

(1) The case before the court involves a Federal employee who is in the process of retiring from Federal employment and the spouse of that employee;

(2) The nonemployee spouse has been given notice and an opportunity to be heard concerning this order;

(3) The court has considered sections 8339(j)(1) of title 5, United States Code, and this section as they relate to waiver of the spousal consent requirement for a married Federal employee to elect an annuity without a reduction to provide a survivor benefit to a spouse at retirement; and

(4) The court finds that exceptional circumstances exist justifying waiver of the nonemployee spouse's consent.

9. In § 831.612, paragraphs (b)(2), (b)(3), (b)(4), and (d) are revised and paragraphs (b)(5) and (e) are added to read as follows:

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

* * * * *

(b) * * *

(2) If it would cause the combined current and former spouse annuities to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the retiree's annuity; or

(3) In the case of a married retiree, if the current spouse does not consent to the election on a form as described in § 831.607(c) and spousal consent is not waived by OPM in accordance with § 831.608; or

(4) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 831.604 (a)(1) or (a)(2); or

(5) In the case of an election under paragraph (a)(2) of this section, to the extent that it provides a former spouse annuity that exceeds the proportion of the retiree's annuity to which the former spouse would have been entitled as a current spouse annuity as of May 7, 1985.

* * * * *

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

(1) The retiree elects, within 2 years after the event causing the former spouse to lose eligibility, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

(e)(1) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section equals 2½ percent of the first $3600 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under § 831.612) for a former spouse whom the employee or Member married after retirement.

(2) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section for employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $2400.

10. Section 831.613 is revised to read as follows:

§ 831.613 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) Except as provided in paragraph (c) of this section, in cases of retirees who retired before May 7, 1985, and married after retirement but before February 27, 1986:

(1) A retiree who was unmarried at the time of retirement may elect, within 1 year after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married and elected a fully reduced annuity or a partially reduced annuity at the time of retirement may elect, within 1 year after a postretirement marriage, to provide a current spouse annuity. If a retiree elects a fully reduced annuity or a partially reduced annuity under this paragraph, the election must equal the election made at the time of retirement.

(3) The reduction under paragraphs (a)(1) or (a)(2) of this section commences on the first day of the month beginning 1 year after the date of the post-retirement marriage.

(b) Except as provided in paragraph (c) of this section, in cases involving retirees who retired on or after May 7, 1985, or married on or after February 27, 1986—

(1) A retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage—

(i) A fully reduced annuity or a partially reduced annuity to provide a current spouse annuity if—

(A) The retiree was awarded a fully reduced annuity under § 831.604 at the time of retirement; or

(B) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 831.608; or

(C) The marriage at the time of retirement was to a person other than the spouse who would receive a current spouse annuity based on the post-retirement election; or

(ii) A partially reduced annuity to provide a current spouse annuity no greater than the current spouse annuity elected for the current spouse at retirement if—

(A) The retiree elected a partially reduced annuity under § 831.607 at the time of retirement;

(B) The election at the time of retirement was made with spousal consent in accordance with § 831.607; and

(C) The marriage at the time of retirement was to the same person who would receive a current spouse annuity based on the post-retirement election.

(3)(i) Except as provided in paragraph (b)(3)(ii) or (b)(4) of this section, a retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraphs (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(ii) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

(4) (i) An election under this section is irrevocable when received by OPM.

(ii) An election under this section is effective when the marriage duration requirements of § 831.618 are satisfied.

(iii) If an election under paragraph (b)(1) or (b)(2) of this section does not become effective, no deposit under paragraph (b)(3) of this section is required.

(iv) If payment of the deposit under paragraph (b)(3) of this section is not required because the election never became effective and if some or all of the deposit has been paid, the amount paid will be returned to the retiree, or, if the retiree has died, to the person who would be entitled to any lump-sum benefits under the order of precedence in section 8342 of title 5, United States Code.

(5) Any reduction in an annuity to provide a current spouse annuity will terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(i) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

(ii) A qualifying court order requires the retiree to provide a former spouse annuity.

(c) Except as provided in § 831.621 or § 831.622, an election under this section is not effective to the extent that it conflicts with a qualifying court order or would cause the combined current and former spouse annuities to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the retiree's annuity.

(d) The amount of the reduction to provide a current spouse annuity under this section equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600.

11. Sections 831.615 and 831.616 are revised to read as follows:

§ 831.615 Proof of eligibility for a child's annuity.

(a) *Proof of paternity.* (1) A judicial determination of parentage conclusively establishes the paternity of a child.

(2) Except as provided in paragraph (a)(1) of this section, a child born to the wife of a married person is presumed to be the child of the wife's husband. This presumption may be rebutted only by clear and convincing evidence that the husband is not the father of the child.

(3) When paternity is not established under paragraph (a)(1) or (a)(2) of this section, paternity is determined by a preponderance of the credible evidence as defined in § 1201.56(c)(2) of this title.

(b) *Proof of adoption.* (1) An adopted child is—

(i) A child adopted by the employee or retiree before the death of the employee or retiree; or

(ii) A child who lived with the employee or retiree and for whom a petition for adoption was filed by the employee or retiree and who is adopted by the current spouse of the employee or retiree after the death of the employee or retiree.

(2) The only acceptable evidence to prove status as an adopted child under paragraph (b)(1)(i) of this section is a copy of the judicial decree of adoption.

(3) The only acceptable evidence to prove status as an adopted child under paragraph (b)(1)(ii) of this section is copies of—

(i) The petition for adoption filed by the employee or retiree (clearly showing the date filed); and

(ii) The judicial decree of adoption.

(c) *Dependency.* To be eligible for survivor annuity benefits, a child must have been dependent on the employee or retiree at the time of the employee's or retiree's death.

(d) *Proof of dependency.* (1) A child is considered to have been dependent on the deceased employee or retiree if he or she is—

(i) A legitimate child; or

(ii) An adopted child; or

(iii) A stepchild or recognized natural child who lived with the employee or retiree in a regular parent-child relationship at the time of the employee's or retiree's death; or

(iv) A recognized natural child for whom a judicial determination of support was obtained; or

(v) A recognized natural child to whose support the employee or retiree made regular and substantial contributions.

(2) The following are examples of proofs of regular and substantial support. More than one of the following proofs may be required to show support of a child who did not live with the employee or retiree in a regular parent-child relationship and for whom a judicial determination of support was not obtained.

(i) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;

(ii) Proof of inclusion of the child as a dependent on the decedent's income tax returns for the years immediately before the employee's or retiree's death;

(iii) Cancelled checks, money orders, or receipts for periodic payments received from the employee or retiree for or on behalf of the child;

(iv) Evidence of goods or services that shows regular contributions of considerable value;

(v) Proof of coverage of the child as a family member under the employee's or retiree's Federal Employees Health Benefits enrollment; and

(vi) Other proof of a similar nature that OPM may find to be sufficient to demonstrate support or parentage.

(3) Survivor benefits may be denied—

(i) If evidence shows that the deceased employee or retiree did not recognize the claimant as his or her own despite a willingness to support the child; or

(ii) If evidence casts doubt upon the parentage of the claimant, despite the deceased employee's or retiree's recognition and support of the child.

§ 831.616 School attendance.

For a child who has attained age 18 to be eligible to receive an annuity as a student, the child must meet all other requirements applicable to a child who has not attained age 18. In addition, OPM must receive certification, in a form prescribed by OPM, that the child is regularly pursuing a full-time course of study in an accredited institution. A full-time course of study is a noncorrespondence course which, if successfully completed, will lead to completion of the education within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

12. In § 831.619, paragraph (b) is revised to read as follows:

§ 831.619 Time for filing applications for death benefits.

* * * * *

(b) A former spouse claiming eligibility for an annuity based on § 831.622 may file an application at any time between November 8, 1984 and May 7, 1989. Within this period, the date that the first correspondence indicating a desire to file a claim is received by OPM will be treated as the application date for meeting timeliness deadlines and determining the commencing date of the survivor annuity under § 831.622 if the former spouse is eligible on that date.

13. In § 831.620, paragraphs (b), (c), (d), and (e) are redesignated paragraphs (c), (d), (e), and (f), respectively; and paragraph (a) is revised and paragraph (b) is added to read as follows:

§ 831.620 Commencing and terminating dates of survivor annuities.

(a) Except as provided in paragraph (b) of this section, current spouse annuities, former spouse annuities, children's survivor annuities, and survivor annuities for beneficiaries of insurable interest annuities under CSRS begin to accrue on the day after death of the employee, Member, or retiree.

(b)(1) A current spouse annuity begins to accrue—

(i) Upon attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; or

(ii) Upon OPM's receipt of a claim for an annuity authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218.

(2) A former spouse annuity begins to accrue—

(i) For annuities under § 831.622, on the later of the day after date of death of the retiree or the first day of the second month after the date the application for annuity is received in OPM; or

(ii) For annuities when a former spouse annuity is authorized by court order under section 8341(h) of title 5, United States Code, on the later of the day after the date of death of the employee, Member, or retiree or the first day of the second month after the court order awarding the former spouse annuity and the supporting documentation required by § 831.1705 are received in OPM.

* * * * *

14. In § 831.621, paragraphs (g), (h), and (i) are added to read as follows:

§ 831.621 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

* * * * *

(g) The annuity reduction resulting in a fully reduced annuity or partially reduced annuity to provide a former spouse annuity under this section terminates on the first day of the month after the former spouse remarries before age 55 or dies.

(h) A former spouse is eligible to receive only one survivor annuity based

on the service of one employee or Member.

(i) If a former spouse is entitled to a former spouse annuity based on an election under this section, but absent that election would have been entitled to a former spouse annuity under § 831.622 (i.e., filed a timely application as well as meeting all other requirements), the amount of the former spouse annuity payable will equal 55 percent of the annuity of the retiree on whose service the survivor annuity is based.

15. In § 831.622, paragraphs (a)(1)(i), (a)(1)(iv), (a)(1)(v), (a)(2)(iii), and (a)(2)(iv) are revised and paragraph (e) is added to read as follows:

§ 831.622 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a)(1) * * *

(i) The former spouse's marriage to the retiree, employee, or Member was dissolved after September 14, 1978, and before May 8, 1987. The date of dissolution of a marriage is the date when the marriage between the former spouse and the retiree, employee, or Member ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissolved.

* * * * *

(iv) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 8, 1989.

(v) The former spouse is at least 50 years old on May 7, 1987, and when filing the application.

(2) * * *

(iii) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 8, 1989.

(iv) The former spouse is at least 50 years old on May 7, 1987, and when filing the application.

* * * * *

(e) If a former spouse is eligible for a former spouse annuity under this section and another current spouse annuity or former spouse annuity (under the Civil Service Retirement System or the Federal Employees Retirement System) resulting from the death of the same retiree, the annuity under this section will be paid instead of the other current spouse annuity or former spouse annuity.

16. In § 831.628, paragraph (b)(5) is added to read as follows:

§ 831.628 Changes in elections to provide a current spouse annuity by a retiree who retired before May 28, 1986.

* * * * *

(b) * * *

(5) For a retiree whose annuity commenced on or after May 7, 1985, an election under paragraph (a) of this section cancels any spouse consent under § 831.604 to the extent of the election.

* * * * *

17. Section 831.630 is added to read as follows:

§ 831.630 Elections between survivor annuities.

(a) A current spouse annuity cannot be reinstated under § 831.625 unless—

(1) The surviving spouse elects to receive the reinstated current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund.

(b) A current spouse is entitled to a current spouse annuity based on an election under § 831.613 only upon electing this current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees.

(c) A former spouse who marries a retiree is entitled to a former spouse annuity based on an election by that retiree under § 831.612, or § 831.621, or a qualifying court order terminating that marriage to that retiree only upon electing this former spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees.

(d) As used in this section, "any other retirement system for Government employees" does not include Survivor Benefit Payments from a military retirement system or social security benefits.

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

18. The authority citation for subpart Q of part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

§ 831.1703 [Amended]

19. In § 831.1703, the definition of "Associate Director" is revised to read as follows:

"*Associate Director*" means the Associate Director for Retirement and Insurance in the OPM or an OPM official authorized to act on his or her behalf.

* * * * *

20. Appendix A to subpart Q of part 831 is revised to read as follows:

Appendix A to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits.

United States of America

Office of Personnel Management

Retirement and Insurance Group

Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

These guidelines explain the interpretation that the Office of Personnel Management (OPM) will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

A substantial number of State court orders are drafted under the mistaken belief that the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 *et seq.*) applies to CSRS benefits. Sections 1003(b)(1) and 1051 of title 29, United States Code, exempt CSRS from ERISA, because CSRS is a "governmental plan" as defined in section 1001(23) of title 29, United States Code. Accordingly, OPM does not honor ERISA Qualifying Domestic Relations Orders (QDRO's) except to the extent that the law governing CSRS expressly authorizes compliance with State court orders. OPM will honor the orders to the extent permitted by CSRS. However, many provisions of ERISA QDRO's are not authorized under CSRS. Most significantly, a court cannot require that payments to the former spouse begin before the employee actually retires (i.e., begins to receive benefits) and, unless the order expressly provides that the former spouse is entitled to a survivor annuity, the payments to the former spouse cannot continue after the employee dies.

I. Computations generally

A. Adjustments affecting court-awarded benefits. 1. Orders that award adjustments to a former spouse stated in terms such as "cost-of-living adjustments" or "COLAs" occurring after the date of the decree but before the date of retirement will be interpreted to award increases equal to the

adjustments described in or effected under section 8340 of title 5, United States Code.

2. Orders that award adjustments to a former spouse stated in terms such as "salary adjustments" or "pay adjustments" occurring after the date of the decree will be interpreted to award increases equal to the adjustments described in or effected under section 5305 of title 5, United States Code until the date of retirement.

3. Unless otherwise specified in the order, adjustments described in section 8340 of title 5, United States Code will be applied after the date of retirement.

B. Application of COLAs. 1. Unless the court directly and unequivocally orders otherwise, decrees that divide annuities either on a percentage basis or by use of a formula will be interpreted to entitle the former spouse to salary adjustments occurring after the date of the decree and cost-of-living adjustments occurring after the date of the decree or occurring after the date of the employee's retirement, whichever comes later.

2. On the other hand, decrees that award a former spouse a specific dollar amount from the annuity will be interpreted as excluding salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.

3. Orders that contain a general instruction to calculate the former spouse's share effective at the time of divorce or separation, will not be interpreted to prevent the inclusion of salary adjustments occurring after the specified date. To prevent the application of salary adjustments after the date of the divorce or separation, the decree must either state the exact dollar amount of the award to the former spouse or specifically state that salary adjustments after the specified date are to be disregarded in computing the former spouse's share.

4. Orders that require OPM to compute a benefit as of a specified date, and specifically state that salary adjustments after the specified date are to be disregarded in computing the former spouse's share will not be interpreted to prevent the application of COLAs *after* the date of the Federal employee's retirement. To award COLAs between the specified date and the Federal employee's retirement, the order must specifically state that the former spouse will receive the benefit of any COLAs occurring between the specified date and the date of the Federal employee's retirement. To prevent the application of COLAs after the retirement date, the decree must either state the exact dollar amount of the award to the former spouse or specifically state that the former spouse will not receive the benefit of COLAs occurring after the date of the Federal employee's retirement.

C. Present value. 1. Orders that award a portion of the "present value" of an annuity will not be honored unless the amount of the "present value" is stated in the order. (See 5 CFR 831.1704(b).)

2. Orders that award a portion of the "present value" of an annuity stated in the order will be interpreted as awarding "a specific dollar amount." Unless the court specifically states otherwise, such an award payable from a monthly annuity benefit will be paid in equal installments at 50 percent of the monthly annuity rate at the time of retirement or the date of the order, whichever comes later, until the specific dollar amount is reached.

3. Orders that award a portion of the "value" of an annuity as of a specific date before retirement, without specifying what "value" is, will be interpreted as awarding a portion of the annuity equal to the monthly annuity rate at the time of retirement times a fraction, the numerator of which is the number of months of "creditable service" or service worked as of the date specified and the denominator of which is the total number of months as of the time of retirement of "creditable service" or service worked, whichever term is used in the court order. (See III. C. of these Guidelines.)

4. Orders that contain general language awarding a specified portion of a Federal employee's "retirement benefits" as of a specified date before retirement, but do not specify whether OPM should use "creditable service" or "service worked" as of the date specified to complete the computation, will be interpreted to award a portion of the annuity equal to the monthly annuity rate at the time of retirement times a fraction, the numerator of which is the number of months of service worked as of the date specified and the denominator of which is the number of months of "creditable service" as of the time of retirement.

D. Annuity as of a date before retirement. Orders that award a portion of an employee's annuity as of a specified date *before* the employee's retirement will be interpreted as awarding a portion of the annuity equal to the monthly annuity rate at the time of retirement times a fraction, the numerator of which is the number of months of "creditable service" or service worked as of the date specified and the denominator of which is the number of months of "creditable service" or service worked used in the retirement computation.

E. Formulas or percentage instructions. Orders that contain both a formula or percentage instruction and a dollar amount will be interpreted as including the dollar amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control.

F. Computation limited to a particular period of employment. In order to limit the computation of benefits to a particular period of employment, the court order must use language expressly limiting the period of service to be included in the computation. General language such as "benefits accrued as a result of employment with the U.S. Postal Service * * *" will be interpreted to mean only that CSRS retirement benefits are subject to division (see V.A. of Appendix A to Subpart Q of Part 831). Such language will not be interpreted to limit the period of service included in the computation (i.e., service performed with other Government agencies will be included). To limit the period of service, the court order should specify the number of months to be included in the computation or should describe specifically the period of service to be included in the computation (e.g., "only U.S. Postal Service" or "exclusive of any service other than U.S. Postal Service employment" or "only service performed during the period Petitioner and Defendant were married" or "benefits based on service performed through the date of divorce," etc.).

G. Amounts less than $12 per year. Orders awarding a former spouse less than $12 per year are qualifying court orders. Such orders will be interpreted as an award of $1 per month.

II. Types of annuity

A. Gross annuity will be interpreted as the amount of the annuity payable after any applicable survivor reduction but before any other deduction.

B. 1. To divide an annuity before any applicable survivor reduction, the decree must contain language to the effect that the division is to be made on the self-only annuity, the life-rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

2. To divide an annuity before the social security offset under section 8349 of title 5, United States Code, the order must expressly state that the division is to occur before the social security offset. The term "unreduced annuity" will mean annuity after the social security offset.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 831.1703.

D. Orders that fail to state the type of annuity that they are dividing will be interpreted as dividing gross annuity (defined above).

E. Orders dividing a "retirement check" will be interpreted as dividing net annuity (as defined in § 831.1703).

III. Calculating time

A. The smallest unit of time that will be used in computing a formula in a decree is a month.

1. This policy is based on section 8332 of title 5, United States Code, that allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts, even where the court order directs OPM to make a more precise calculation. However, if the court order states a formula using a specified simple or decimal fraction other than twelfth parts, OPM will use the specified number to perform simple mathematical computations. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measured *in years and twelfth parts.*

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the

exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. 1. Unused sick leave is counted as "creditable service" on the date of separation for immediate retirement; it is not apportioned over the time when earned.

2. When an order contains a formula for dividing annuity that requires a computation of service worked as of a date prior to separation and using terms such as "years of service," "total service," or similar terms, the time attributable to unused sick leave will not be included.

3. When an order contains a formula for dividing annuity that requires a computation of "creditable service" (or some other phrase using "credit" or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows—

(i) If the amount of unused sick leave is specified, the order will be interpreted to award a portion of the annuity equal to the monthly annuity at retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified plus the number of months of unused sick leave specified and whose denominator is the months of "creditable service" used in the retirement computation.

(ii) If the amount of unused sick leave is not specified, the order will be interpreted to award a portion of the annuity equal to the monthly rate at the time of retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified (no sick leave included) and whose denominator is the number of months of "creditable service" used in the retirement computation.

IV. Distinguishing Between Divisions of Annuity and Refunds of Contributions

A. Orders that are unclear about whether they are dividing an annuity or a refund of contributions will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits become payable, such as refunds. Orders using "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be interpreted as dividing the amount of contributions the employee has paid into the Civil Service Retirement Fund. Unless the court order specifically states otherwise, when an annuity is payable, such orders will be paid in equal monthly installments at 50 percent of the monthly annuity at the time of retirement or the date of the order, whichever comes later, until the specific dollar amount is reached.

V. Identifying Benefits Affected

A. Orders that do not specify what pension or retirement benefits are to be divided will not be interpreted as dividing CSRS benefits. Terms such as "CSRS," "United States," "OPM," "Federal Government" benefits, "Postal Service retirement benefits," "retirement benefits payable based on service with the U.S. Department of Agriculture," or similar terms will be considered sufficient to identify civil service retirement benefits for division.

B. Except as provided below, orders directed at other retirement systems will not be interpreted as affecting CSRS benefits.

1. Orders that mistakenly label CSRS benefits as Federal Employees Retirement System (FERS) benefits, will be interpreted as dividing CSRS benefits and *vice versa.*

2. Unless the order expressly provides otherwise, for employees transferring to FERS, orders directed at CSRS benefits will be interpreted as applying to the entire FERS basic benefit, including the CSRS component, if any.

C. Orders directed at other Federal retirement systems such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits will not be interpreted as dividing CSRS benefits.

D. Orders dividing military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, will not be interpreted as dividing CSRS benefits. (Such orders cannot be qualifying orders under section 831.1704(b), because the amount cannot be computed from the face of the order or from normal OPM files.)

VI. State Law not Specified in Court Orders

A. 1. Except as provided in Guideline VI.A.2., OPM will not research, interpret, or apply State law regarding community or marital property rights or divisions.

2. OPM will not divide disability retirement benefits when such a division would be contrary to State law unless the order expressly directs division of "disability" benefits.

B. Orders that do not specify the "community property" fraction or percentage of the former spouse's share will not be considered qualifying because the amount of the benefit cannot be computed from the face of the order or from normal OPM files (5 CFR 831.1704(b)).

21. Appendix B to subpart Q of part 831 is revised to read as follows:

Appendix B to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

United States of America

Office of Personnel Management

Retirement and Insurance Group

Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

These guidelines explain the interpretation that the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Section 8341(h) of title 5, United States Code, provides for "former spouse annuities." Section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8341(h) annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8341(h) annuity, the order must use terms such as "former spouse annuity," "section 8341(h) annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8339(k). These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The retiree may also elect to cancel the insurable interest annuity to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8341(h) annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8339(k) will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8341(h)," the section reference will control.

II. Orders Directed at Other Retirement Systems

A. Except as provided in paragraphs A1 and A2, orders directed at other retirement systems will not be interpreted as affecting Civil Service Retirement System (CSRS) benefits.

1. Orders that mistakenly label CSRS benefits as Federal Employee's Retirement System (FERS) benefits, will be interpreted as affecting CSRS benefits and *vice versa.*

2. Unless the order expressly provides otherwise, for employees transferring to FERS, orders directed at CSRS benefits will be interpreted as applying to the entire FERS basic benefit, including the CSRS component, if any.

B. Orders directed at other Federal retirement systems such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits will not be interpreted as awarding a former spouse annuity under CSRS. Thus, orders should contain language identifying the retirement system from which survivor benefits are being awarded. For example, orders should contain terms such as "CSRS," "OPM," "Federal Government employee

survivor benefits," or "survivor benefits payable based on service with the U. S. Department of Agriculture," etc.

C. Orders affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, will not be interpreted as awarding a former spouse annuity under CSRS.

III. Specificity Required To Award a Former Spouse Annuity.

A. Orders must contain language identifying the benefits affected. For example, "CSRS," "OPM," or "Federal Government" survivor benefits, or "survivor benefits payable based on service with the U.S. Department of Agriculture," etc., will be considered sufficient identification.

B. 1. Except as provided paragraphs B2 through B4, orders must specify the benefit being awarded. Orders must contain language such as "survivor annuity," "death benefits," "former spouse annuity under 5 U.S.C. 8341(h)(1)," etc.

2. Orders that provide that the former spouse is to "continue as" or "be named as" the "designated beneficiary" of CSRS benefits will be interpreted to award a former spouse annuity.

3. Orders that provide that the former spouse will "continue to receive benefits after the death of" the employee or "that benefits will continue after the death of" the employee, but do not use terms such as "survivor annuity," "death benefits," "former spouse annuity," or similar terms will not be interpreted to award a former spouse annuity.

4. Orders that give the former spouse the right to elect a former spouse annuity will be interpreted to award a former spouse annuity. The former spouse does not have an election opportunity. OPM will not accept an election by the former spouse to eliminate the court-awarded former spouse annuity.

C. 1. Orders that unequivocally award survivor annuity and direct the former spouse to pay for that benefit are qualifying court orders. If the former spouse has also been awarded a portion of the retiree's benefits then the cost of the survivor benefit will be deducted from the former spouse's portion of the annuity (if sufficient to cover the total cost—there will be no partial withholding). Otherwise, the reduction will be taken from the retiree's annuity and collection from the former spouse will be a private matter between the parties.

2. Orders that condition the award of survivor annuity on the former spouse's payment of the cost of the benefit are qualifying only if there is also an award of retirement benefits sufficient to cover the cost. Absent a sufficient award of employee retirement benefits to pay the cost of survivor benefits, the order is not qualifying.

D. Orders providing that former spouses will keep the survivor annuity to which they were entitled at the time of the divorce will be interpreted to award a former spouse annuity in the same amount as they had at the time of divorce.

E. Orders that fail to state the amount of the former spouse annuity will be interpreted as providing the maximum former spouse annuity.

F. Orders awarding a former spouse annuity of less than $12 per year are qualifying court orders. Such orders will be interpreted to provide an initial rate of $1 per month plus all cost-of-living increases occurring after the date of the order. The reduction in the retiree's annuity will be computed as though the order provided a former spouse annuity of $1 per month.

G. Orders that provide *full* survivor annuity benefits to a former spouse with the contingency that the employee or annuitant may elect a *lesser* benefit for the former spouse upon his or her remarriage will be interpreted to provide only a full survivor annuity benefit to the former spouse. In order to provide full survivor annuity benefits to a former spouse with the contingency that the employee or annuitant may provide a lesser survivor annuity benefit to the former spouse in order to provide survivor annuity benefits for a subsequent spouse, the order should allow a reduction in the former spouse benefit contingent upon the employee's or annuitant's *election* of survivor annuity benefits for a subsequent spouse. A reduction in the amount of survivor benefits provided to the former spouse will not be permitted if it is contingent upon the employee's or annuitant's *remarriage* rather than his or her *election* of survivor annuity benefits for a subsequent spouse. (See 5 CFR 831.1704(b).)

Subpart T—Payment of Lump Sums

22. The authority citation for subpart T of part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

23. In § 831.2007, paragraph (b) is redesignated paragraph (b)(1), and paragraph (b)(2) is added, paragraph (d)(2) is revised and paragraph (e) is added to read as follows:

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

* * * * *

(b) * * *

(2) Applicants for payment of the lump-sum credit must certify on a form prescribed by OPM whether the applicant has a current or former spouse subject to the notification requirement. The applicant will be required to execute the form before a notary public or other official authorized to administer oaths.

* * * * *

(d) * * *

(2) The current mailing address of the current or former spouse. OPM will attempt to notify (by certified mail—return receipt requested) the current or former spouse at the address provided by the employee or Member. Except as provided in paragraph (e) of this section, the lump-sum credit will not be paid until at least 20 days after OPM receives the signed return receipt.

(e) If an OPM notice sent under paragraph (d)(2) of this section is returned and OPM has no reason to believe that the current or former spouse does not live at the address to which the notice was sent, OPM will re-mail the notice by first class mail and wait at least 20 days after the notice has been re-mailed before paying the refund.

24. In § 831.2009, paragraphs (e), (f) and (g) are added to read as follows:

§ 831.2009 Court orders or decrees preventing payment of lump sums.

* * * * *

(e) Except as provided in paragraph (f) of this section, a court order or decree directed at a refund of retirement contributions is not effective unless the court order or decree and supporting documentation required by § 831.1705 are received by OPM not later than—

(1) The last day of the second month before payment of the refund; or

(2) Twenty days after OPM receives the Statement required by section § 831.2007(c) if the former spouse has indicated on that Statement that such an order exists.

(f) The interests of a former spouse with a court order or decree who does not receive notice of a refund application because the former employee or Member submits fraudulent proof of notification or fraudulent proof that the former spouse's whereabouts are unknown are protected if, and only if—

(1) The former spouse files the court order or decree with OPM no later than the last day of the second month before the payment of the refund; or

(2) The former spouse submits proof that—

(i) The evidence submitted by the employee was fraudulent; and

(ii) Absent the fraud, the former spouse would have been able to submit the necessary documentation required by § 831.1705 within the time limit prescribed in paragraph (e) of this section.

(g) Court orders, notices, summons, or other documents that attempt to restrain OPM from paying refunds of retirement contributions are not effective unless they meet all the requirements of—

(1) Paragraph (a) of this section, including the requirement that the court order or decree, or a prior court order or decree, has awarded the former spouse a former spouse annuity as defined in § 831.603 or a portion of the employee's or Member's future annuity benefit; or

(2) Part 581 of this chapter.

[FR Doc. 90-5573 Filed 3-9-90; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 890

RIN 3206-AD37

Federal Employees Health Benefits Program Withdrawal of Carrier and Plan Approval

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is amending the Federal Employees Health Benefits (FEHB) Program regulations to provide additional details on the circumstances, behaviors, and/or practices that could lead to OPM's withdrawing approval of either a health benefits plan or a carrier for that plan to continue its participation in the FEHB Program. These revisions incorporate a number of standards for carrier performance currently found in another body of regulations, the Federal Acquisition Regulation (FAR) as supplemented by the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The regulation also provides some specific examples based on those standards of the types of situations that could give rise to OPM's withdrawing approval for either a health benefits plan or a carrier to continue in the Program.

EFFECTIVE DATE: April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632-4634, ext. 6747.

SUPPLEMENTARY INFORMATION: On February 16, 1989, OPM published proposed regulations (54 FR 7039) which would consolidate the minimum requirements/standards required of FEHB Program carriers and provide the carriers with a greater understanding as to what actions on their part might warrant OPM's withdrawal of approval under § 890.204 of the FEHB regulations. The regulation also proposed procedures for withdrawing approval in greater detail than in previous regulations.

OPM received comments from two FEHBP carriers, two unions sponsoring FEHBP employee organization plans, one organization sponsoring an FEHBP comprehensive medical plan, one underwriter, an association of nurses, an association of retired Federal employees, and one Federal agency. The comments, which were generally supportive of the regulation, are addressed below along with OPM's response.

The FEHB statute gives OPM the authority to withdraw approval of a plan and terminate a carrier's contract if the carrier did not enroll at least 300 employees and annuitants at any time during the preceding two contract terms (5 U.S.C. 8902(e)). OPM included this statutory authority in the proposed regulation to emphasize that OPM considers it a minimum standard and that OPM may withdraw approval of a plan when the condition is not met.

Two comments were received concerning the inclusion of the "300-member rule" as a minimum standard. Even though § 890.201(a)(11) clearly gives OPM the authority to waive the standard for extenuating circumstances, the commenters are concerned that the circumstances under which OPM would consider granting a waiver will be too narrow. They suggest that such details as quality of service, number of Federal employees in the plan's service area, Federal experience with the HMO, and the plan's location in a medically underserved area should be considered before a decision is made to withdraw approval. We wish to reassure the commenters that the circumstance cited in § 890.204(b) (renumbered as § 890.204(a)(3) in the final regulation) is merely an example of an extenuating circumstance that OPM would consider (note "e.g.") and that all relevant information, including those items enumerated by the commenters, will be considered in OPM's evaluation of a carrier's ability to continue in the FEHB Program.

Further, one of the commenters expressed concern that § 890.204(b) requires OPM to send the carrier notice of withdrawal of approval of its plan before it considers all extenuating circumstances. OPM agrees that it would be counterproductive to issue written notice of non-renewal prior to considering all relevant information, and OPM does not intend to proceed in such a manner. The final regulation clarifies this provision.

We have made a technical change to 5 CFR 890.204(a)(3) by deleting the stipulation that OPM notify a carrier whose plan does not meet the minimum enrollee requirement at least 60 days before the contract renewal date. This deletion was made to conform the regulation to the Renewal and Withdrawal of Approval clause at 48 CFR 1652.249-70.

Two commenters were concerned about the application of provisions in § 890.202(b)(5), (b)(6) and (c)(5), relating to cost accounting and cost accounting systems, to community rated comprehensive medical plans. The commenters requested that OPM revise the regulation to clarify that systems of cost accounting will be a required prudent business practice only in contracts in which, and to the extent, cost analysis is a factor. We believe that these sections of the regulation are clear in their application. Section 890.202(b)(5) states that prudent business practice includes "A system for accounting for costs incurred under the contract, *when required*" (underlining supplied). The items under § 890.202(c) relate to a carrier's responsibility "under its contract." Section 890.202(b)(6) calls for accurate accounting reports of actual, allowable, allocable, and reasonable costs incurred in the administration of the contract. OPM's contracts with community rated comprehensive medical plans do not require the segregation and pricing of FEHB medical utilization and the allocation of indirect and administrative costs. Provisions relating to determining rates and reporting actual costs, therefore, would not apply to community rated plans.

One underwriter is concerned that the proposed rules impose more severe penalties on carriers than does the False Claims Act, 31 U.S.C. 3729 *et seq.* The underwriter correctly concludes that charging an unallowable cost against a contract through mistake or negligence would constitute a false claim under § 890.202(a)(1), while the same action would not constitute a false claim under the False Claims Act because that Act limits its scope to actions involving actual knowledge of the false information, deliberate ignorance of the truth or falsity of information, or reckless disregard of the truth or falsity of the information. The underwriter suggests that OPM qualify § 890.202(c)(1) by referencing the False Claims Act.

OPM is not required to adopt the criteria of the False Claims Act in this regulation. As administrator of the FEHB Program, OPM has an obligation to establish criteria that meet the needs of the Program. OPM deems it necessary for the integrity of the FEHB Program to be able to withdraw approval of a carrier that exhibits a *pattern* of poor conduct even though the carrier's action is the result of negligence or mistake. We have determined that a continuous and repetitive "pattern" of negligent or erroneous actions is neither a desirable nor an acceptable business practice for an FEHB Program carrier, and we do not wish to surrender the right to withdraw approval for such actions.

Three comments relate to due process under the withdrawal of approval procedures in § 890.204. One commenter was concerned that § 890.204 does not

ensure an impartial hearing, since the same person may be involved in both the decision to initiate the withdrawal of approval process and the hearing itself. We have addressed this problem by clarifying that a hearing officer designated by the Director will not be a party to the initial decision to withdraw approval. In addition, we have deleted the words "or representative", wherever they appear with regard to the actual decision to withdraw or reinstate approval of a carrier or plan. Thus, a decision to withdraw approval of a carrier or plan may be made only by the Director of OPM.

Another commenter inquired about the process by which a carrier or plan would determine guilt with regard to the actions described in § 890.202(c). The commenter erroneously concluded that OPM would be making determinations in criminal matters. OPM will not be sitting in judgment of carriers or plans; but will use the results of criminal proceedings as evidence in making its determinations. For example, if an insurance company was reprimanded by the insurance commissioner in its own state for using fraudulent business practices, OPM would use the evidence in its decision whether or not to withdraw approval.

The same commenter suggested that OPM outline procedures to govern the actual conduct of OPM's hearings. We would like to point out that section 8902(e) of title 5 of the United States Code gives OPM authority to withdraw approval of an FEHB Program carrier or plan without regard to the administrative procedures contained in 5 U.S.C. chapter 5, subchapter II or the judicial review procedures in 5 U.S.C. chapter 7. We have made a clarifying change to the final regulation that acknowledges the hearing officer's right to make a recommendation to the Director when a recommendation is warranted (§ 890.204(a)(2)(ii)). This practice conforms with general Government hearing procedures. However, we believe that it is inappropriate to publish detailed hearing procedures in Federal regulation. If a carrier of a plan has specific questions concerning the hearing procedures when it is notified by OPM that approval has been withdrawn, it should bring these questions to the attention of the contracting officer at that time.

One comment concerned the 15-day timeframes for response by a carrier after OPM's notice of intent to withdraw approval and notification of the hearing date. The commenter believes the timeframes do not allow sufficient time to prepare an adequate response. We have retained the 15-day timeframes because we believe the carrier or plan will have adequate time to respond. A detailed reply is not needed for the initial reply to OPM's notice of intent to withdraw approval. The reply need only state briefly the reasons the carrier or plan believes OPM should not withdraw approval. After OPM replies with notice of a hearing, the carrier or plan has an additional 15 days in which to prepare a detailed position for the hearing. Taking into account time in the mails and administrative time for OPM's response, we estimate the carrier or plan will have a minimum of 1½ months to gather all necessary information. In point of fact, OPM's experience indicates that there is generally a 2-month lapse between the date of OPM's notice of intent to withdraw approval and the hearing date. For this reason, OPM does not believe a longer regulatory timeframe is warranted.

Finally, one commenter recommended that the regulation be modified to include a procedure for agencies to follow in notifying enrollees when an insurance carrier is dropped from the FEHB Program. Section 890.301(k), title 5, Code of Federal Regulations authorizes enrollees whose enrollment is terminated because their plan is discontinued or dropped from the FEHBP to enroll in another plan. OPM has issued procedural guidance to all Federal agencies through the Federal Personnel Manual System to effect enrollment changes of all types. In addition, at the time a plan is discontinued or terminated, OPM provides specific guidance to Federal agencies regarding enrollees' rights and procedures to be followed. OPM believes it is neither necessary nor desirable to repeat these procedures in regulation.

Minor technical changes have been made to the regulation for clarification.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it primarily clarifies existing OPM policy on withdrawing approval of FEHB plans and carriers.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100–654; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744; Subpart K also issued under title II of Pub. L. 100–654.

2. In § 890.201, the introductory text to paragraphs (a) and (b) are revised, and new paragraphs (a)(11) and (c) are added to read as follows:

§ 890.201 Minimum standards for health benefits plans.

(a) To qualify for approval by OPM, a health benefits plan shall meet the following standards. Once approved, a health benefits plan shall continue to meet the minimum standards. Failure on the part of the carrier's plan to meet the standards is cause for OPM's withdrawal of approval of the plan in accordance with 5 CFR 890.204. A health benefits plan shall:

* * * * *

(11) Except where OPM determines otherwise, have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan at some time during the preceding two contract terms.

(b) To be qualified to be approved by OPM and, once approved, to continue to be approved, a health benefits plan shall not:

* * * * *

(c) The Director or his or her designee will determine whether to propose withdrawal of approval of the plan and hold a hearing based on the seriousness of the carrier's actions and its proposed method to effect corrective action.

3. In § 890.202, paragraphs (a) through (f) are redesignated as (a)(1) through (a)(6) respectively, the introductory text to the section is designated as paragraph (a) introductory text and revised, and new paragraphs (b), (c), and (d) are added to read as follows:

§ 890.202 Minimum standards for health benefits carriers.

(a) The carrier of an approved health benefits plan shall meet the requirements of chapter 89 of title 5, United States Code, chapters 1 and 16 of title 48, Code of Federal Regulations,

and the following standards. The carrier shall continue to meet the requirements of chapter 89 of title 5, United States Code, and the above cited standards while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the contract in accordance with § 890.204 of this part.

* * * * *

(b) In addition to the standards in paragraph (a) of this section, the carrier must perform the contract in accordance with prudent business practices. A carrier's sustained poor business practice in the management or administration of a health benefits plan is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the carrier's contract. Prudent business practices include, but are not limited to, the following:

(1) Timely compliance with OPM instructions and directives.

(2) Legal and ethical business and health care practices.

(3) Compliance with the terms of the FEHB contract, regulations and statutes.

(4) Timely and accurate adjudication of claims or rendering of medical services.

(5) A system for accounting for costs incurred under the contract, when required, which includes segregating and pricing FEHB medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner.

(6) Accurate accounting reports of actual, allowable, allocable, and reasonable costs incurred in the administration of the contract.

(c) The following types of activities are examples of poor business practices which adversely affect the health benefits carrier's responsibility under its contract. A pattern of poor conduct or evidence of misconduct in these areas is cause for OPM to withdraw approval of the carrier.

(1) Presenting false claims by charging expenses to the contract which according to the contract terms are not chargeable to the contract.

(2) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty.

(3) Repeatedly and knowingly providing false or misleading information in the rate setting process.

(4) Repeated failure to comply with OPM instructions and directives.

(5) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract.

(6) Failure to assure that the plan provides properly paid or denied claims, or providing medical services which are inconsistent with standards of good medical practice.

(d) The Director or his or her designee will determine whether to propose withdrawal of approval and hold a hearing based on the seriousness of the carrier's actions and its proposed method to effect corrective action.

4. Section 890.204 is revised to read as follows:

§ 890.204 Withdrawal of approval of health benefits plans or carriers.

(a) The Director may withdraw approval of a health benefits plan or carrier if the standards at §§ 890.201 and 890.202 of this part are not met. Such action carries with it the right to a hearing as provided in paragraph (a)(2) of this section.

(1) Before withdrawing approval, the Director or his or her representative shall notify the carrier of the plan, by certified mail, that OPM intends to withdraw approval of the health benefits plan and/or carrier. The notice shall set forth the reasons why approval is to be withdrawn. The carrier is entitled to reply in writing within 15 calendar days after its receipt of the notice, stating the reasons why approval should not be withdrawn.

(2) On receipt of the reply, or in the absence of a timely reply, the Director or representative shall set a date, time, and place for a hearing. The carrier shall be notified by certified mail at least 15 calendar days in advance of the hearing. The hearing officer shall be the Director, or a representative designated by the Director, who shall not otherwise have been a party to the initial administrative decision to issue a letter of intent to withdraw the plan's or carrier's approval. The hearing officer shall conduct the hearing unless it is waived in writing by the carrier. The carrier is entitled to appear by representative and present oral or documentary evidence, including rebuttal evidence, in opposition to the proposed action.

(i) A transcribed record shall be kept of the hearing and shall be the exclusive record of the proceeding.

(ii) After the hearing is held, or after OPM's receipt of the carrier's written waiver of the hearing, the Director shall make a decision on the record, taking into consideration any recommendation submitted by the hearing officer, and send it to the carrier by certified mail. A decision of the Director shall be considered a final decision for the purposes of this section. The Director, or his or her representative, may set a future effective date for withdrawal of approval.

(3) The Director, or his or her representative, may give written notice of non-renewal of the contract of a carrier whose plan does not meet the minimum enrollee requirement in § 890.201(a)(11). However, the Director may defer withdrawing approval of a plan not meeting the requirement in § 890.201(a)(11) of this part when, in the judgment of OPM, the carrier shows good cause. The Director or representative may authorize a plan with fewer than 300 employees or annuitants to remain in the FEHB Program when he or she determines, in his or her discretion, that it is in the best interest of the Program (e.g., when the plan is the only plan available to enrollees in a rural area).

(b) During a current contract term, the Director, in his or her discretion, may reinstate approval of a plan or carrier under this section on a finding that the reasons for withdrawing approval no longer exist.

[FR Doc. 90-5574 Filed 3-9-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF ENERGY

10 CFR Part 600

Objective Merit Review of Discretionary Financial Assistance Applications; Extension of Time for Publication of Review Systems

AGENCY: Department of Energy.

ACTION: Rule related notice.

SUMMARY: The Department of Energy (DOE) at 54 FR 41943, October 13, 1989, amended its financial assistance regulations (10 CFR part 600) by requiring program offices to establish and publish a system of objective merit review of discretionary financial assistance applications. Paragraph 600.16(a)(1) required program officials to publish the system of objective merit review for their programs within 120 days of the issuance of the rule. This date has been computed to be February 6, 1990. Several programs have requested an extension of this compliance date, and in response to those requests the time for compliance has been extended as set forth below.

DATES: The date for the DOE program offices compliance with the provisions of 10 CFR 600.16(a)(1) is extended to May 15, 1990.

FOR FURTHER INFORMATION CONTACT: Edward F. Sharp, Business and Financial Policy Division, MA-402.2, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8192.

Dated: March 6, 1990.

Berton J. Roth,

Acting Director, Procurement and Assistance Management.

[FR Doc. 90-5600 Filed 3-9-90; 8:45 am]

BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4; Amdt. 22]

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On November 3, 1988, the President signed Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988 (Act). The following rules are amendments required by the Act: (1) Definition of "rural areas" for purposes of placing greater emphasis on the needs of such areas, and (2) authority for a contract between a rural CDC with another CDC in the same general area to satisfy the requirements of a full-time professional staff and management ability. In addition, this set of rules makes changes which are necessary to conform the regulations to the statutory changes and to administrative experience since the last amendment. The latter changes include a revision of language relating to leases in *alter ego* transactions, the addition of rural development as a national objective, a prohibition for principals of borrower small concerns to receive loan proceeds, a revision as to when the loan processing fee is earned, and a change in the minimum deposit from $1,000 or 1½%, to $2,500 or 1%, whichever is less.

EFFECTIVE DATE: This rule is effective March 12, 1990.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, Small Business Administration, Room 720, 1441 L Street NW., Washington, DC 20416, Telephone (202) 653-6986.

SUPPLEMENTARY INFORMATION: On September 14, 1989, SBA published a Notice of Proposed Rulemaking (54 FR 37945), proposing the rules now being published as final. The comment period closed October 16, 1989. Three comments, generally supportive of the proposals, were received. Specific comments will be discussed below together with the referenced provisions.

The first three changes are designed to reflect the statutory changes made by the Act. Changes related to rural development would be made in §§ 108.2 *Definitions*, and 108.503(b)(3) to define the term "rural area" and to add rural development to the list of National Objectives which the program is designed to serve. The statute defines "rural areas" simply as "those localities with populations of less than 20,000". It is thus necessary to circumscribe the term "localities". A comment pointed out that the proposed definition did not consider that some States do not use the term "county" for component divisions, and also omitted consideration of unincorporated areas. Accordingly, the definition now speaks of counties or their equivalent, and further speaks of political subdivisions or unincorporated areas. Another comment pointed out that populations are sometimes increased by student or summer populations. Accordingly, the definition now speaks of *resident* populations.

In addition, § 108.503-1(b)(3) is amended to authorize a rural CDC to satisfy the requirements of professional staff and management ability by acquiring these capabilities through contract with a nearby, fully staffed CDC.

Section 108.8(d)(5) is amended to permit, in "alter ego" situations, that the remaining term of the lease may include options, which in the aggregate are at least equal to the term of the loan and are exercisable only by the operating small concern.

Section 108.503-4(a) is amended to add § 120.103-3 to the list of the loan policy provisions of part 120 which are made applicable to the CDC program. Section 120.103-3 provides for an appeal procedure when a loan is declined.

Section 108.503-4(b) is amended to add to the categories of ineligible projects, one so structured that part or all of the debenture proceeds go to the applicant's principals, thereby increasing the danger of a conflict of interest.

Section 108.503-6 is amended to provide in paragraph (a)(1) that two-thirds of the loan processing fee shall be deemed earned by the CDC when SBA issues the debenture authorization, and the remaining third when the loan from the CDC to the borrower is closed. Two comments pointed out that sometimes the loan authorization contains unanticipated features which cause the applicant to forego the financing. In such cases, it would be inappropriate to require the CDC to forfeit the processing fee since their loan processing has been completed and the fee earned. Accordingly, no provision is made for withdrawal after SBA has issued the debenture authorization.

A further amendment, to paragraph (b) of § 108.503-6, changes the provision for a deposit which the 503 company may require with the loan application, from the current $1,000 or one and one-half percent to $2,500 or one percent, whichever is less. This deposit must be promptly returned to the applicant if the loan is declined, and may be applied towards the processing fee if the loan is approved. In the event the application is withdrawn by applicant prior to approval, the deposit is refunded after deduction of processing costs. We believe that this requirement to compensate the CDC for work performed on applications that are subsequently withdrawn will discourage frivolous applications.

The language related to negotiation of the Central Fiscal Agent (CFA) fee in § 108.503-11(a) is deleted as unnecessary because no new CFA agreements will be concluded. The CFA services related to debentures sold to the Federal Financing Bank. This financing mechanism is no longer in use. All projects under this program are now funded by the public sale of debenture pool participations.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this proposal, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this rule on the national economy would not attain $100 million. In this regard, we estimate that SBA will make no more than $20 million annually in additional loans for rural development, and no more than $5 million of *alter ego* loans where the lease term plus options equals the loan term. We further estimate that contracts between rural CDC's and their fully-staffed partners will not aggregate more than $500,000. We believe that the prohibition against self-dealing projects will prevent less than $20 million of projects. The change in the deposit fee structure will cause less than a $20,000 increase in aggregate deposit fees.

These rules will not result in a major increase in costs or prices to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that these rules do not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the provisions of this rule may have a significant economic impact on a substantial number of small entities. The following analysis of the provisions is provided within the context of the review prescribed in the Regulatory Flexibility Act (5 U.S.C. 603).

1. These regulations are promulgated:

(a) To implement Pub. L. 100–590, cited above;

(b) To conform existing regulations to the requirements of the new law;

(c) To enable small businesses with 503 loans to avoid costly recordation fees;

(d) To codify SBA's appeal procedure when a loan is declined;

(e) To prohibit a conflict-of-interest situation not expressly addressed previously;

(f) To discourage frivolous applications; and

(g) To delete obsolete language concerning the Central Fiscal Agent (CFA).

2. The legal bases for these regulations are section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6); sections 308(b) and 503(a)(2) of the Small Business Investment Act, 15 U.S.C. 687(b) and 697(a)(2); and section 136 of Public Law 100–590, cited above.

3. These regulations, taken together, apply to all 503 companies and to all small concerns applying, or contemplating an application, for assistance under this program. While it is impossible to estimate their number, we can say that 1170 debenture guarantees were made by SBA in FY 1988.

4. There are no additional reporting, recordkeeping and other compliance requirements inherent in these rules.

5. There are no Federal rules which duplicate, overlap or conflict with these rules.

6. There are no significant alternate means to accomplish the objectives of these regulations.

For purposes of the Paperwork Reduction Act, Public Law 98–115, 44 U.S.C. Ch. 35, SBA certifies that these rules impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out in the preamble, part 108 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c, Pub. L. 100–590.

2. Section 108.2 is amended by adding immediately after the definition of "Reserve Deposit" a new definition "Rural Area" as follows:

§ 108.2 Definitions.

* * * * *

"*Rural Area*" means:

(1) Any political subdivision or unincorporated area in a nonmetropolitan county (as defined by the Economic Development Division, Economic Research Service, U.S. Department of Agriculture) or the equivalent thereof, which subdivision or area has a resident population of less than 20,000; or

(2) Any political subdivision or unincorporated area in a metropolitan county or the equivalent thereof, with a resident population of less than 20,000 if SBA has determined such political subdivision or area to be rural.

* * * * *

3. Section 108.8 is amended by revising the second sentence of paragraph (d)(5) to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(d) * * *

(5) * * * The lease (including options exercisable exclusively by such operating small concern) shall be for a term of not less than the term of the section 502 or 503 loan.

* * * * *

4. Section 108.503(b)(3) is revised to read as follows:

§ 108.503 Program objectives.

* * * * *

(b) * * *

(3) *National objectives.* A project which will result in:

(i) Increased productivity through the modernization of existing facilities necessary to retain jobs,

(ii) Expansion of exports,

(iii) Expansion of minority business development,

(iv) Assisting manufacturing firms (SIC Codes 20–49),

(v) Assisting businesses in rural areas (as defined in § 108.2), or

(vi) Assisting businesses in labor surplus areas as defined by the U.S. Department of Labor (see paragraph (c) of this section below).

Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed the standard of paragraph (c) of this section.

* * * * *

5. Section 108.503–1 is amended by revising the first sentence of paragraph (b)(3) to read as follows:

§ 108.503–1 Eligibility requirements for 503 companies.

* * * * *

(b) * * *

(3) *Professional staff.* Each 503 company shall have a full-time professional staff and professional management ability (including adequate accounting, legal and business-servicing abilities): *Provided, however,* That a 503 company serving a rural area, as defined in § 108.2, shall be deemed to have satisfied the foregoing requirements if it contracts with another 503 company in the same general area, which has such staff and such management ability, to provide necessary services.* * *

* * * * *

6. Section 108.503–4 is amended by revising the fourth sentence of paragraph (a) and redesignating present paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5) respectively, and adding a new (b)(3) to read as follows:

§ 108.503–4 Project eligibility.

(a) *Eligible projects.* * * * Sections 120.101 (a) through (d), (f) and (g), 120.102–7, 120.103–2 (a) through (e) and 120.103–3 of this chapter also apply. * * *

* * * * *

(b) * * *

(3) Those where the applicant or any Associate thereof (as defined in § 108.2) would, directly or indirectly, receive all or any part of 503 loan proceeds, except as permitted under §§ 108.503–5 (a) and (d), 108.503–6 (a) and (b) and 108.503–11(b)(2).

* * * * *

7. Section 108.503–6 is amended by revising paragraph (a)(1) and (b) to read as follows:

§ 108.503–6 Costs which may be charged to the small concern by the 503 company.

* * * * *

(a) * * *

(1) *Loan processing fee.* The cost incurred by the 503 company for loan packaging, processing and non-legal staff functions related to loans shall be recovered through a loan processing fee not to exceed one and one-half percent (1.5%) of the net debenture proceeds (as defined in § 108.2). Two thirds of the loan processing fee shall be deemed earned and may be collected by the 503 company when the debenture authorization for the particular loan is

issued by SBA. The deposit described in paragraph (b) of this section shall be applied to this portion of such fee. The remainder of the loan processing fee shall be deemed earned when the 503 loan is closed (see § 108.503-12). The 503 company, in its discretion, may collect the loan processing fee when earned or from the debenture proceeds. The loan processing fee paid by the borrower may be reimbursed from the debenture proceeds (see § 108.503-5(b)).

* * * * *

(b) *Deposits.* (1) A 503 company may require a deposit of the lesser of $2,500 or 1% of the net debenture proceeds, as defined in § 108.2, at the time it accepts an application for processing.

(2) If the 503 company or SBA declines the application, such deposit shall be refunded within ten days after all appeal rights (see § 120.103-3 of this chapter) have been exhausted or waived.

(3) When the debenture authorization is issued by SBA, the deposit may be applied towards the loan processing fee (see paragraph (a)(1) of this section).

(4) If the applicant withdraws its loan application at any time before SBA issues the debenture authorization, the 503 company may deduct its reasonable and necessary costs incurred in packaging and processing the loan application. Such costs shall be documented. Any remaining deposit balance shall be remitted to the applicant within ten days of such withdrawal.

* * * * *

§ 108.503-11 [Amended]

8. Section 108.503-11 *Central fiscal agent* is amended by removing the last two sentences of paragraph (a).

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: February 15, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-5555 Filed 3-9-90; 8:45 am]

BILLING CODE 6025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-32; Amdt. 39-6539]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 214ST Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain BHTI Model 214ST helicopters by individual letters. The AD required repetitive fluorescent penetrant or magnetic particle inspections of each main rotor (M/R) drag brace assembly for corrosion and cracks. The AD was necessary to prevent failure of the main rotor drag brace assembly which could result in subsequent loss of the helicopter.

DATES: *Effective date:* Effective April 9, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-12-03, issued June 3, 1988, which contained this amendment.

Compliance: Required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: Applicable AD-related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

SUPPLEMENTARY INFORMATION: On June 3, 1988, Priority Letter AD 88-12-03 was issued and made effective immediately as to all known U.S. owners and operators of certain BHTI Model 214ST helicopters. The AD was prompted by a reported fracture of a main rotor drag brace barrel with 398 hours' time in service. AD action was necessary to prevent loss of the main rotor drag brace, and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued June 3, 1988, to all known U.S. owners and operators of certain BHTI Model 214ST helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** with the following non-substantive changes as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons. The following minor editorial changes have been made. Inspection procedures are now included in paragraph (a) and corrosion removal criteria are now included in paragraph (b) of the AD, rather than as references to the Bell Helicopter Textron Alert Service Bulletin. In addition, the provisions for obtaining approval of an alternate method of compliance are moved from paragraph (c) to a new paragraph (e). Paragraph (c) now includes the assembly and installation procedures for the drag brace assembly which were extracted from the Alert Service Bulletin. Finally, two new paragraphs have been added. Paragraph (d) states the AD is no longer applicable after the new drag brace assembly is installed. The new paragraph (f) allows for ferry flight. These changes to the priority letter AD are editorial and non-substantive and impose no additional burden on anyone.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that if this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423: 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI):

Applies to Bell Model 214ST helicopters, serial numbers 28101 through 28195 and 18402, certificated in any category. (Docket No. 88-ASW-32)

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor (M/R) drag brace assembly which could result in subsequent loss of the helicopter, accomplish the following:

(a) For each M/R drag brace assembly, part number (P/N) 214-010-113-105, with 250 or more hours' time in service, inspect within the next 10 hours' time in service and thereafter at intervals not to exceed 250 hours' time in service as follows:

(1) Remove drag brace assembly to the blade attachment bolt, P/N 20-057-16-68D, and the drag brace to the grip attachment bolt, P/N 20-057-16-92D.

(2) Measure length of each drag brace assembly, then disassemble and thoroughly clean all parts.

(3) Inspect the barrel, P/N 214-010-120-107; the clevis, P/N 214-010-121-105; and the nuts, P/N 214-010-198-101, for corrosion pitting and mechanical damage. Remove the part from service if pitting is found in the threads.

Note: If corrosion pitting or mechanical damage is superficial, it may be polished out.

(4) Remove paint and primer for inspection.

(5) Inspect each drag brace barrel for cracks using a magnetic particle or fluorescent penetrant method. Pay special attention to the threaded area.

(b) If cracks are found, or if corrosion pitting or mechanical damage is found which exceeds a maximum depth of 0.010 inch, replace with serviceable parts.

(c) Assemble and install the drag brace as follows:

(1) Threads of barrel which have cadmium plating removed during disassembly must be brush cadmium plated or protected. Coat threads of the drag brace barrel, nuts, and the inner surface of clevis with either corrosion preventive compound MIL-C-16173, Grade 2 or Grade 3, or an equivalent.

(2) Reassemble and reset the length of the drag brace as measured in the requirements of paragraph (a)(2). Torque inboard nut 375 to 425 foot pounds, while holding outboard nut.

(3) Reinstall the drag brace assembly and torque inboard and outboard attachment bolt nuts, 225 to 400 foot pounds.

(4) After final drag brace adjustment, if required, clean the exterior of the drag brace assembly. Coat the threads, nuts, and clevis area with MIL-C-16173, Grade 1 (drying), corrosion preventive compound or equivalent.

(d) Whenever a new design drag brace assembly, P/N 214-010-191-101, is installed in accordance with BHTI Alert Service Bulletin (ASB) 214ST-88-47, Revision A, dated February 20, 1989, this AD no longer applies.

(e) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

(f) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the inspection may be accomplished.

This amendment becomes effective April 9, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-12-03, issued June 3, 1988, which contained this amendment.

Issued in Fort Worth, Texas, on March 1, 1990.

Robert T. Weaver,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-5539 Filed 3-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Table of Exempt Prescription Products

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Interim rule and request for comments.

SUMMARY: This interim final rule updates the Table of Exempt Prescription Products found in § 1308.32 of title 21 of the Code of Federal Regulations by adding those prescription products to the list that have been granted exempt status since April 1, 1989.

DATES: Effective April 1, 1990. Comments should be submitted on or before May 11, 1990.

ADDRESSES: Comments should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act, as amended by the Dangerous Drug Diversion Control Act of 1984, authorizes the Attorney General at 21 U.S.C. 811(g)(3)(A) to exempt, from specific provisions of the Act, a preparation or mixture if that preparation or mixture: (1) Contains a nonnarcotic controlled substance; (2) is approved for prescription use; and (3) meets certain criteria. An exemption may be granted if the nonnarcotic controlled substance is combined with one or more active medicinal ingredients which are not listed in any schedule and whose presence vitiates the potential for abuse of the nonnarcotic controlled substance. Such exemptions apply only to a specific prescription product and are only granted following suitable application to the Drug Enforcement Administration per 21 CFR 1308.31. The current Table of Exempt Prescription Products found in 21 CFR part 1308 lists those products that have been granted exempt status as of April 1, 1989 (54 FR 11520).

The Deputy Assistant Administrator of the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of products to the list of exempt prescription products has the effect of exempting them from certain measures of control imposed by the Controlled Substances Act of 1970 and its implementing regulations.

The Office of Management and Budget (OMB) has previously determined that these changes are internal agency matters which do not require formal OMB review. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(A) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR part 1308 as set forth below.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

§ 1308.32 [Amended]

2. In § 1308.32, the list of products found in the Table of Exempt Prescription Products is revised to read as follows:

§ 1308.32 Exempted prescription products.

* * * * *

TABLE OF EXEMPT PRESCRIPTION PRODUCTS

Company	Trade Name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Adria Laboratories	Axotal	00013-1301	TB	Butalbital	50.00
Alpha Scriptics Inc	Butacet Capsules	53121-0133	CA	Butalbital	50.00
American Urologicals Inc	Butace	00539-0906	CA	Butalbital	50.00
Apotheca	Theophen	12634-0101	TB	Phenobarbital	8.00
Arco Pharmaceuticals	Arco-Lase Plus	00275-0045	TB	Phenobarbital	8.00
Arlo Interamerican	Espasmotex	11475-0835	TB	Phenobarbital	20.00
Ascher and Co	Anaspaz PB	00225-0300	TB	Phenobarbital	15.00
Ascot Pharmaceuticals	Antispasmodic Tablets	47679-0158	TB	Phenobarbital	16.20
Ascot Pharmaceuticals	Chlordiazepoxide Hydrochloride + Clidinium Bromide.	47679-0268	CA	Chlordiazepoxide HCl	5.00
Ayerst Laboratories	PMB-200	00046-0880	TB	Meprobamate	200.00
Ayerst Laboratories	PMB-400	00046-0881	TB	Meprobamate	400.00
Barre Drug Co	Barophen	00472-0981	EL	Phenobarbital	3.24
Barre Drug Co	Isolate Compound	00472-0929	EL	Phenobarbital	0.40
Baucum Laboratories Inc	Butalbital, Acetaminophen and Caffeine Tablets.	54696-0513	TB	Butalbital	50.00
Beecham Laboratories	Hybephen	00029-2360	TB	Phenobarbital	15.00
Bioline Labs Inc	Anti-Spas Elixir	00719-4090	EL	Phenobarbital	3.24
Bioline Labs Inc	Anti-Spas Tablets	00719-1091	TB	Phenobarbital	16.20
Bioline Labs Inc	Bel-Phen-Ergot-S Tablets	00719-1686	TB	Phenobarbital	40.00
Bioline Labs Inc	Chlordinium	00719-1208	CA	Chlordiazepoxide HCl	5.00
Blaine Co	Spaslin	00165-0029	TB	Phenobarbital	16.20
Blansett Pharm Co	Anolor 300 Capsules	51674-0009	CA	Butalbital	50.00
Bock Pharmacal Co	Broncholate	00563-0277	CA	Phenobarbital	8.00
Bowman Pharmaceutical	Private Formula No 3095	00252-3095	TB	Phenobarbital Sodium	15.00
Breon Labs	Isuprel Compound	00057-0874	EL	Phenobarbital	0.40
Caldwell & Bloor Co	Hyosital White	00361-2131	TB	Phenobarbital	16.20
Carnrick Labs Inc	Phrenilin	00086-0050	TB	Butalbital	50.00
Carnrick Labs Inc	Phrenilin Forte	00086-0056	CA	Butalbital	50.00
Carpenter Pharmacal Co	ALAGESIC Tablets	55726-0300	TB	Butalbital	50.00
Chelsea Laboratories	Chlordiazepoxide with Clidinium Bromide.	46193-0948	CA	Chlordiazepoxide HCl	5.00
Columbia Drug Co	Isopap Capsules	11735-0400	CA	Butalbital	50.00
Consolidated Midland	Bellalphen	00223-0425	TB	Phenobarbital	16.20
Dorasol Laboratories	Donalixir	00471-0095	EL	Phenobarbital	3.24
Dunhall Pharmacal Inc	Triaprin	00217-2811	CA	Butalbital	50.00
Econolab	Micomp-PB Tablets	55053-0525	TB	Pentobarbital Sodium	30.00
Equipharm Corp	EQUI-CET Tablets	57779-0111	TB	Butalbital	50.00
Everett Laboratories Inc	Repan Capsules	00642-0163	CA	Butalbital	50.00
Everett Laboratories Inc	Repan Tablets	00642-0162	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 325 mg/Butalbital 50 mg.	00456-0674	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 500 mg/Butalbital 50 mg.	00456-0671	TB	Butalbital	50.00
Forest Pharmacal Inc	Bancap	00456-0546	CA	Butalbital	50.00
Forest Pharmacal Inc	ESGIC-PLUS	00456-0678	TB	Butalbital	50.00
Forest Pharmacal Inc	Esgic Capsules	00456-0631	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Tablets	00456-0630	TB	Butalbital	50.00
Forest Pharmacal Inc	G.B.S.	00456-0281	TB	Phenobarbital	8.00
Forest Pharmacal Inc	Soniphen	00456-0429	ET	Phenobarbital	16.00
Gen-King Products	Antispasmodic	03547-0777	TB	Phenobarbital	16.20
Genetco Inc	Butalbital, Acetaminophen and Caffeine Tablets.	00302-0490	TB	Butalbital	50.00
Genetco Inc	Butalbital, Apap and Caffeine	00302-0490	TB	Butalbital	50.00
Geneva Generics	Phenobarbital, Ergotamine and Belladonna Tablets.	00781-1701	TB	Phenobarbital	40.00
Geriatric Pharmacal Corp	Bilezyme Plus	00249-1112	TB	Phenobarbital	8.00
Geriatric Pharmacal Corp	Gustase Plus	00249-1121	TB	Phenobarbital	8.00
Glenlawn Laboratories	Chlordinium Sealets	00580-0084	CA	Chlordiazepoxide HCl	5.00
Goldline Laboratories	Antispasmodic Elixir	00182-0686	EL	Phenobarbital	3.24
Goldline Laboratories	Antispasmodic Tablets	00182-0129	TB	Phenobarbital	16.20
Goldline Laboratories	Bel-phen-ergot s Tablets	00182-1847	TB	Phenobarbital	40.00
Goldline Laboratories	Butalbital, APAP and Caffeine Tablets	00182-1274	TB	Butalbital	50.00
Goldline Laboratories	C.D.P. Plus Capsules	00182-1856	CA	Chlordiazepoxide HCl	5.00
H.L. Moore Drug Exchange	Antispasmodic Tablets	00839-5055	TB	Phenobarbital	16.00
H.L. Moore Drug Exchange	Bellamor Tablets	00839-7370	TB	Phenobarbital	40.00
H.L. Moore Drug Exchange	Theophenyllin	00839-5111	TB	Phenobarbital	8.00
Halsey Drug Co Inc	Blue Cross Butalbital, APAP and Caffeine Tablets.	00879-0567	TB	Butalbital	50.00

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade Name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Halsey Drug Co Inc	Butalbital and Acetaminophen Tablets	00879-0543	TB	Butalbital	50.00
Halsey Drug Co Inc	Clinoxide	00879-0501	CA	Chlordiazepoxide HCl	5.00
Halsey Drug Co Inc	Susano	00879-0059	EL	Phenobarbital	3.24
Halsey Drug Co Inc	Susano	00879-0058	TB	Phenobarbital	16.20
Horizon Products Co	Spastrin Tablets	54580-0124	TB	Phenobarbital	40.00
Hyrex Pharmaceutical	Panzyme	00314-0310	TB	Phenobarbital	8.10
Hyrex Pharmaceutical	Two-Dyne Revised	00314-2229	TB	Butalbital	50.00
Interstate Drug Exchange	IDE-Cet Tablets	00814-3820	TB	Butalbital	50.00
Interstate Drug Exchange	Spastolate	00814-7088	TB	Phenobarbital	16.20
Intetlab	CON-TEN	11584-1029	CA	Butalbital	50.00
Kaiser Foundation Hosp	Belladonna Alkaloids with Phenobarbital.	00179-0045	EL	Phenobarbital	3.24
Keene Pharmacal Inc	Endolar	00588-7777	CA	Butalbital	50.00
Knoll Pharmaceutical	Quadrinal Suspension	00044-4580	SS	Phenobarbital	2.40
Knoll Pharmaceutical	Quadrinal Tablets	00044-4520	TB	Phenobarbital	24.00
Kraft Pharmacal Co Inc	Digestokraft	00796-0237	TB	Butabarbital Sodium	8.00
Kremers Urban Co	Levsin with Phenobarbital Elixir	00091-4530	EL	Phenobarbital	3.00
Kremers Urban Co	Levsin with Phenobarbital Tablets	00091-3534	TB	Phenobarbital	15.00
Kremers Urban Co	Levsin-PB	00091-4536	DP	Phenobarbital	15.00
Kremers Urban Co	Levsinex with Phenobarbital	00091-3539	XC	Phenobarbital	45.00
Landry Pharmacal Inc	Febridyne Plain Capsules	05383-0001	CA	Butalbital	50.00
Lanpar Co	PB Phe-Bell	12908-7006	TB	Phenobarbital	16.20
Lasalle Laboratories	Pacaps Modified Formula	48534-0884	CA	Butalbital	50.00
Lemmon Pharmacal Co	Donphen	00093-0205	TB	Phenobarbital	15.00
Life Laboratories	Belladonna Alkaloids with Phenobarbital.	00737-1283	EL	Phenobarbital	3.00
Lunsco Inc	Pacaps Capsules	10892-0116	CA	Butalbital	50.00
Major Pharmacal Corp	Bellamine Tablets	00904-2548	TB	Phenobarbital	40.00
Major Pharmacal Corp	Cafatine-PB Tablets	00904-1750	TB	Pentobarbital Sodium	30.00
Major Pharmacal Corp	Fabophen Tablets	00904-3280	TB	Butalbital	50.00
Mallard Inc	Anoquan Modified Formula	00166-0881	CA	Butalbital	50.00
Mallard Inc	Malatal	00166-0748	TB	Phenobarbital	16.20
Marlop Pharmacal Inc	Broncomar	12939-0128	EL	Butabarbital	1.00
Marlop Pharmacal Inc	Dolmar	12939-0812	CA	Butalbital	50.00
Marnel Pharmacal Inc	Margesic Capsules	00682-0804	CA	Butalbital	50.00
Martec Pharmacal Inc	Butalbital, Acetaminophen and Caffeine Tablets.	52555-0079	TB	Butalbital	50.00
Mayrand Pharmacal Inc	B-A-C Tablets	00259-1256	TB	Butalbital	50.00
Mayrand Pharmacal Inc	Sedapap-10 Tablets	00259-1278	TB	Butalbital	50.00
Mead Johnson Pharmacal	Quibron Plus Capsules	00087-0518	CA	Butabarbital	20.00
Mead Johnson Pharmacal	Quibron Plus Elixir	00087-0511	EL	Butabarbital	1.33
Medco Supply Co	Phenobarbital & Hyoscyamine Sulfate	00764-2057	TB	Phenobarbital	16.20
Mikart Inc	Butalbital and Acetaminophen Tablets 50/325.	46672-0099	TB	Butalbital	50.00
Mikart Inc	Butalbital and Acetaminophen Tablets 50/650.	46672-0098	TB	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen and Caffeine Capsules.	46672-0228	CA	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen and Caffeine Tablets.	46672-0053	TB	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen, and Caffeine Tablets.	46672-0059	TB	Butalbital	50.00
Nejo Pharmaceutical	Spasmalones	00653-0002	TB	Phenobarbital	16.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/2	00071-0531	CA	Phenobarbital	32.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/4	00071-0375	CA	Phenobarbital	16.00
Parke-Davis & Co	Tedral SA	00071-0231	XT	Phenobarbital	25.00
Parmed Pharmaceutical	Sedapar Elixir	00349-4100	EL	Phenobarbital	3.24
Parmed Pharmaceutical	Sedapar Tablets	00349-2355	TB	Phenobarbital	16.20
Pasadena Research	Seds	00418-4072	TB	Phenobarbital	16.20
Pharmaceutical Basics Inc	Antispasmodic Elixir	00832-8009	EL	Phenobarbital	3.24
Pharmaceutical Basics Inc	Butalbital, Acetaminophen and Caffeine Tablets.	00832-1102	TB	Butalbital	50.00
Pharmaceutical Basics Inc	Clinibrax Capsules	00832-1054	CA	Chlordiazepoxide HCl	5.00
Poythress & Co Inc	Antrocol	00095-0041	CA	Phenobarbital	16.00
Poythress & Co Inc	Antrocol Elixir	00095-0042	EL	Phenobarbital	3.00
Poythress & Co Inc	Antrocol Tablets	00095-0040	TB	Phenobarbital	16.00
Poythress & Co Inc	Mudrane	00095-0050	TB	Phenobarbital	8.00
Poythress & Co Inc	Mudrane GG Elixir	00095-0053	EL	Phenobarbital	0.50
Poythress & Co Inc	Mudrane GG Tablets	00095-0051	TB	Phenobarbital	8.00
Private Formula Inc	Sangesic	00511-1627	TB	Butalbital	30.00
Qualitest Products Inc	Butalbital, Acetaminophen and Caffeine Tablets.	52446-0544	TB	Butalbital	50.00
Qualitest Products Inc	Chlordiazepoxide HCl 5 mg and Clidinium Br 2.5 mg.	52446-0096	CA	Chlordiazepoxide HCl	5.00
Redi-Med	Butalbital Compound Capsules	53506-0103	CA	Butalbital	50.00
Rexar Pharmacal Corp	Rexatal Tablets	00478-5477	TB	Phenobarbital	16.52
Richlyn Laboratories	Aminophylline & Phenobarbital	00115-2156	ET	Phenobarbital	15.00
Richlyn Laboratories	Aminophylline & Phenobarbital Tablets	00115-2154	TB	Phenobarbital	15.00
Richlyn Laboratories	Bellophen	00115-2400	TB	Phenobarbital	16 20

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade Name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Richlyn Laboratories	Spasmolin	00115-4652	TB	Phenobarbital	15.00
Robins A H Co Inc	Donnatal Capsules	00031-4207	CA	Phenobarbital	16.20
Robins A H Co Inc	Donnatal Elixir	00031-4221	EL	Phenobarbital	3.24
Robins A H Co Inc	Donnatal Extentabs	00031-4235	XT	Phenobarbital	48.60
Robins A H Co Inc	Donnatal No 2	00031-4264	TB	Phenobarbital	32.40
Robins A H Co Inc	Donnatal Tablets	00031-4250	TB	Phenobarbital	16.20
Robins A H Co Inc	Donnazyme	00031-4649	ET	Phenobarbital	8.10
Roche Labs	Librax	00140-0007	CA	Chlordiazepoxide HCl	5.00
Roche Labs	Menrium 10-4	00140-0025	TB	Chlordiazepoxide	10.00
Roche Labs	Menrium 5-2	00140-0023	TB	Chlordiazepoxide	5.00
Roche Labs	Menrium 5-4	00140-0024	TB	Chlordiazepoxide	5.00
Rondex Laboratories	Antispasmodic	00367-4118	TB	Phenobarbital	16.20
Rotex Pharmacal Inc	Rogesic Capsules	31190-0008	CA	Butalbital	50.00
Ruckstuhl Co	Sedarex No 3	00144-1575	TB	Phenobarbital	16.20
Rugby Laboratories Inc	Clindex	00536-3490	CA	Chlordiazepoxide HCl	5.00
Rugby Laboratories Inc	Ergocaff-PB Tablets	00536-3801	TB	Pentobarbital Sodium	30.00
Rugby Laboratories Inc	Hyosophen Capsules	00536-3926	CA	Phenobarbital	16.00
Rugby Laboratories Inc	Hyosophen Tablets	00536-3920	TB	Phenobarbital	16.20
Rugby Laboratories Inc	ISOCET Tablets	00536-3951	TB	Butalbital	50.00
Rugby Laboratories Inc	Phenerbel-S Tablets	00536-4234	TB	Phenobarbital	40.00
Rugby Laboratories Inc	Theodrine Tablets	00536-4648	TB	Phenobarbital	8.00
Russ Pharmacal Inc	FEMCET Capsules	50474-0703	CA	Butalbital	50.00
Sandoz Pharmacal Corp	Belladenal	00078-0028	TB	Phenobarbital	50.00
Sandoz Pharmacal Corp	Belladenal-S	00078-0027	XT	Phenobarbital	50.00
Sandoz Pharmacal Corp	Bellergal-S	00078-0031	XT	Phenobarbital	40.00
Sandoz Pharmacal Corp	Cafergot P-B Suppository	00078-0035	SU	Pentobarbital	60.00
Sandoz Pharmacal Corp	Cafergot P-B Tablets	00078-0036	TB	Pentobarbital Sodium	30.00
Sandoz Pharmacal Corp	Fioricet	00078-0084	CA	Butalbital	50.00
Schein Henry Inc	Antispasmodic	00364-0020	TB	Phenobarbital	16.00
Schein Henry Inc	Antispasmodic Elixir	00364-7002	EL	Phenobarbital	3.20
Schein Henry Inc	Isolate Compound Elixir	00364-7029	EL	Phenobarbital	0.40
Schein Henry Inc	T-E-P	00364-0266	TB	Phenobarbital	8.10
Shoals Pharmacal Co	Tencet	47649-0370	TB	Butalbital	50.00
Shoals Pharmacal Co	Tencet Capsules	47649-0560	CA	Butalbital	50.00
Stewart-Jackson Pharmacal	Ezol	45985-0578	CA	Butalbital	50.00
Stuart Pharmaceutical	Kinesed	00038-0220	TB	Phenobarbital	16.00
Superpharm Laboratories	Chlordiazepoxide HCl & Clidinium Br	57247-1003	CA	Chlordiazepoxide HCl	5.00
Towne Paulsen & Co	T. E. P.	00157-0980	TB	Phenobarbital	8.00
Trimen Labs	Amaphen Capsules (reformulated)	11311-0954	CA	Butalbital	50.00
Truxton C O Inc	Atropine Sulfate with Phenobarbital	00463-6035	TB	Phenobarbital	15.00
Truxton C O Inc	Ephedrine with Phenobarbital	00463-6086	TB	Phenobarbital	15.00
Truxton C O Inc	Spastemms Elixir	00463-9023	EL	Phenobarbital	3.24
Truxton C O Inc	Spastemms Tablets	00463-6181	TB	Phenobarbital	15.00
U.S. Pharmaceuticals Inc	Medigesic Tablets	52747-0311	TB	Butalbital	50.00
UAD Laboratories Inc	Bucet Capsules	00785-2307	CA	Butalbital	50.00
UAD Laboratories Inc	Bucet Tablets	00785-2307	TB	Butalbital	50.00
UAD Laboratories Inc	Triad	00785-2306	TB	Butalbital	50.00
UAD Laboratories Inc	Triad Capsules	00785-2305	CA	Butalbital	50.00
UDL Laboratories	Belladonna Alkaloids with Phenobarbital.	51079-0168	TB	Phenobarbital	16.20
United Research Labs Inc	Bel-Tabs	00677-1171	TB	Phenobarbital	40.00
University of Iowa	Bladder Mixture Plus Phenobarbital	11326-1624	LQ	Phenobarbital	2.92
Vale Chemical Co	Alkaloids of Belladonna and Phenobarbital.	00377-0527	TB	Phenobarbital	16.20
Vale Chemical Co	Antispas	00377-0622	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid (Revised) Green	00377-0365	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid Yellow	00377-0498	TB	Phenobarbital	16.20
Vale Chemical Co	Charspast	00377-0500	TB	Phenobarbital	16.20
Vale Chemical Co	Digestokraft	00377-0460	TB	Butabarbital Sodium	8.00
Vale Chemical Co	Ephedrine & Sodium Phenobarbital	00377-0109	TB	Phenobarbital Sodium	16.20
Vale Chemical Co	Panzyme	00377-0491	TB	Phenobarbital	8.10
Vale Chemical Co	Pulsaphen	00377-0652	TB	Phenobarbital	15.00
Vale Chemical Co	Truxaphen	00377-0541	TB	Phenobarbital	16.20
Vale Chemical Co	Wescophen S-II	00377-0628	TB	Phenobarbital	30.00
Vale Chemical Co	Wesmatic Forte	00377-0426	TB	Phenobarbital	8.10
Vitarine Pharmacal Inc	E-Caff PB Tablets	00185-0982	TB	Pentobarbital	30.00
Vortech Pharmacal Co	Donna-Sed	00298-5054	EL	Phenobarbital	3.24
Vortech Pharmacal Co	Hypnaldyne	00298-1778	TB	Phenobarbital	16.20
Vortech Pharmacal Co	Isophed	00298-5680	LQ	Phenobarbital	0.40
Vortech Pharmacal Co	Phedral C. T.	00298-1173	TB	Phenobarbital	8.10
W.E. Hauck Inc	G-1 Capsules	43797-0244	CA	Butalbital	50.00
Wallace Laboratories	Barbidonna Elixir	00037-0305	EL	Phenobarbital	3.20
Wallace Laboratories	Barbidonna No 2	00037-0311	TB	Phenobarbital	32.00
Wallace Laboratories	Barbidonna Tablets	00037-0301	TB	Phenobarbital	16.00
Wallace Laboratories	Butibel Elixir	00037-0044	EL	Butabarbital Sodium	3.00
Wallace Laboratories	Butibel Tablets	00037-0046	TB	Butabarbital Sodium	15.00
Wallace Laboratories	Lufyllin-EPG Elixir	00037-0565	EL	Phenobarbital	1.60
Wallace Laboratories	Lufyllin-EPG Tablets	00037-0561	TB	Phenobarbital	16.00
Wallace Laboratories	Miprem-200	00037-5501	TB	Meprobamate	200.00

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade Name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Wallace Laboratories	Milprem-400	00037-5401	TB	Meprobamate	400.00
Wesley Pharmacal Co	Hytrophen	00917-0244	TB	Phenobarbital	16.20
Wesley Pharmacal Co	Pulsaphen Gray	00917-0113	TB	Phenobarbital	15.00
Wesley Pharmacal Co	Wescophen-S	00917-0135	TB	Phenobarbital	30.00
Wesley Pharmacal Co	Wesmatic Forte	00917-0845	TB	Phenobarbital	8.00
West-ward Inc	Belladonna Alkaloids & Phenobarbital	00143-1140	TB	Phenobarbital	16.20
West-ward Inc	Butalbital with Acetaminophen and Caffeine Tablets.	00143-1787	TB	Butalbital	50.00
West-ward Inc	Theophylline Ephedrine & Phenobarbital.	00143-1695	TB	Phenobarbital	8.00
Winthrop Labs	Isuprel	00024-0874	EL	Phenobarbital	0.40
Zenith Labs Inc	Azpan	00172-3747	TB	Phenobarbital	8.00

Dated: March 5, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-5492 Filed 3-9-90; 8:45 am]

BILLING CODE 4410-09-M

21 CFR Part 1308

Schedules of Controlled Substances Placement of N,N-Dimethylamphetamine Into Schedule I; Correction

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final order published on Friday, February 2, 1990 (55 FR 3586) by which the Administrator of the Drug Enforcement Administration placed the stimulant substances *N,N*-dimethylamphetamine into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). Section 1308.11 of title 21 of the Code of Federal Regulations is corrected to add *N,N*-dimethylamphetamine as paragraph (f)(4) instead of (f)(3).

EFFECTIVE DATE: March 12, 1990.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: *N,N*-dimethylamphetamine was placed into Schedule I of the Controlled Substances Act pursuant to 21 U.S.C. 811(a) by the Administrator of the Drug Enforcement Administration in a final order published in the **Federal Register** on February 2, 1990 (55 FR 3586). It was listed as a stimulant in paragraph (f)(3) of § 1308.11 of title 21 of the Code of Federal Regulations. The substance 4-methylaminorex which was placed into Schedule I of the CSA on April 13, 1989 (54 FR 14799) was already listed as paragraph (f)(3) in 21 CFR 1308.11. Therefore, *N,N*-dimethylamphetamine should be listed as paragraph (f)(4) of 21 CFR 1308.11. Accordingly, the amendatory language on page 3588 of the final order published on February 2, 1990, is corrected as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11 is amended by adding paragraph (f)(4) as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(4) *N,N*-dimethylamphetamine (also known as *N,N*-alpha-trimethyl-benzeneethanamine; *N,N*-alpha-trimethylphenethylamine), 1480.

Dated: March 5, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-5566 Filed 3-9-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 885

[Docket No. R-90-1469; FR-2536-F-01]

RIN 2502-AE58

Loans for Housing for the Elderly or Handicapped Duration of Section 202 Fund Reservations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing projects that receive direct loans under section 202 of the Housing Act of 1959 to permit HUD's regional offices to extend the duration of fund reservations by an additional 12 months under described circumstances. This rule also adds procedures governing the appeal of HUD decisions to cancel loan reservations for section 202 projects receiving section 8 assistance, as required under section 161(e) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). These appeals procedures are the same as those currently in effect for projects for nonelderly handicapped families and individuals.

EFFECTIVE DATE: This rule is effective on April 12, 1990, except for § 885.230(b), which will not be effective until approval of the information collection requirements in that section and issuance of an approval number by the Office of Management and Budget (OMB). HUD will publish a separate notice announcing the effective date of those sections and the OMB approval number.

FOR FURTHER INFORMATION CONTACT:

For Section 202/Section 8 projects: Robert Wilden, Assisted Elderly and Handicapped Housing Division, Office of Elderly and Assisted Housing, room 6116. Telephone (202) 426-8730.

For projects for nonelderly handicapped families and individuals: Margaret Milner, Office of Elderly and Handicapped Housing, room 6114. Telephone (202) 755-3287. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-3938. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been

submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Expedited review has been requested by April 6, 1990, so that the application process described in this rule may be carried out following OMB approval of the necessary collections of information.

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**, at the same time that the rule's effective date is published.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information of the estimated public reporting burden is provided under the preamble heading "Other Matters". Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington D.C. 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

HUD's regulations governing projects that receive direct loans under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the United States Housing Act of 1937 are found at 24 CFR part 885, subpart B. Regulations for projects that receive direct loans under section 202 to serve nonelderly handicapped families and individuals are found at 24 CFR part 885, subpart C. This revises both subparts with respect to the duration of the section 202 fund reservations. It also amends subpart B to add procedures governing the appeal of decisions to cancel loan reservations, as required under section 161(e) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988).

I. Cancellation of the Fund Reservation

Under existing §§ 885.230 and 885.770, the field office, subject to the approval of the Assistant Secretary, is permitted to cancel a fund reservation at any time if it can be established that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition. The field office is required to cancel a fund reservation if construction is not begun within 18 months after the issuance of the fund reservation, but may extend this time period up for up to six additional months.

HUD has found that many Borrowers are not able to start construction, rehabilitation or acquisition within the 24 month period permitted under the current regulations due to reasons beyond the Department's or the Borrower's control. (For example, such activities are often delayed by litigation involving the Borrower or the Department, or the Borrower's inability to proceed due to local opposition or a lack of cooperation with local governments.) To ensure that such projects are not prematurely terminated, this rule revises §§ 885.230 and 885.770 to permit the HUD regional office to extend the period within which the project is begun up to 36 months after the notice of section 202 fund reservation is issued. Under the rule as revised, the HUD regional office may grant an extension beyond 24 months if the delay has been for reasons beyond the Borrower's control; the Borrower has done everything within its power to resolve the problems causing the delay; all major problems have been resolved, or there is good reason to expect prompt resolution; and there is good reason to expect the start of construction, rehabilitation, or acquisition with or without rehabilitation to begin within the extension period.

II. Appeal of Fund Reservation Cancellation

Section 202(n) of the Housing Act of 1959 (as added by section 161(e) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988)) provides that the Secretary shall notify the project sponsor not less than 30 days prior to cancelling any loan authority provided under this section. During the 30-day period following the receipt of the notice, the sponsor is permitted to appeal the proposed cancellation of loan authority. Such appeal, including review by the Secretary, must be completed not later than 45 days after the appeal is filed.

The final rule adds procedures (in § 885.230(b)) for the appeal of the cancellation of loan authority with respect to projects for the elderly or handicapped. These procedures are identical to those (in § 885.770(b)), currently applicable to projects for nonelderly handicapped families. The rule provides that if HUD determines that a fund reservation must be cancelled, the field office must mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of cancellation will describe the reasons for the cancellation of the loan authority, will advise the Borrower that it may file an appeal within 30 days of the receipt of the notice, and will state that failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

If the Borrower files a timely appeal, HUD headquarters will review the appeal and will issue a decision within 45 days of the receipt of the appeal. The standard for approval of the appeal is the same as that prescribed for the extension of the fund reservation (*i.e.*, The Borrower must demonstrate that it is making satisfactory progress toward the start of construction, rehabilitation or acquisition with or without substantial rehabilitation.) The rule provides that HUD will provide a written notification to the Borrower of its determination on appeal. If the appeal is granted, the notification will include the duration of the extended fund reservation.

III. Final Rule

HUD has determined that notice and prior public comment on this rule is unnecessary and that good cause exists for making this rule effective as soon as possible after publication. By permitting HUD's regional offices to extend the duration of fund reservations by an additional 12 months, the final rule will increase the flexibility of the program and will have a beneficial impact on Borrowers whose projects are delayed by circumstances beyond the Borrower's or HUD's control. To the extent that the rule addresses appeals of cancellations of fund reservations, the rule primarily implements statutorily imposed procedural requirements of a technical nature.

IV. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section

1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the rule will have a beneficial impact on Borrowers whose projects are delayed by circumstances beyond the Borrower's or HUD's control, the number of small entities affected should be small.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will not have a significant impact on the family. The final rule amends provisions governing the extension and cancellation of loan reservations under the section 202/8 program and will have little, if any, impact on family formation, maintenance or well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have federalism implications. The final rule amends provisions governing the extension and cancellation of loan reservations made by HUD to non-profit Borrowers under the section 202/8 program and will not have any direct impact on the States.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Section 885.230(b) of this final rule has been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN, FINAL RULE—SECTION 202 HOUSING FOR THE ELDERLY OR HANDICAPPED

Collection of information collection requirement	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Borrower's appeal of loan cancellation	885.230(b)	30	1	30	.5	15
	885.770(b)	10	1	10	.5	5
Total hours						20

This rule was listed as item number 1056 in the Department's Semiannual Agenda of Regulations published October 30, 1989 (54 FR 44702, 44723) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number is 14.157, Housing for the Elderly or Handicapped)

List of Subjects in 24 CFR Part 885

Aged, Grant programs: housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

Accordingly, the Department amends 24 CFR part 885 to read as follows:

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for 24 CFR part 885 continues to read as follows:

Authority: Section 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 885.230 is revised to read as follows:

§ 885.230 Duration of section 202 fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance under § 885.225.

(1) Subject to the approval of the Assistant Secretary, the field office may, at any time, issue a notice of intent to cancel the fund reservation if the field office determines that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(2) Subject to the approval of the Assistant Secretary, the field office shall issue a notice of intent to cancel the fund reservation if the construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation of a project is not begun within 18 months after the notice of section 202 fund reservation under § 885.225(a) is issued or, if applicable, within an extension of the 18-month period granted under paragraph (a)(3) of this section.

(3) The field office may extend the period specified in paragraph (a)(2) of this section up to 24 months after the notice of section 202 fund reservation is issued, if HUD determines that the Borrower is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without rehabilitation. The regional office may grant additional extensions of up to 36 months after the notice of section 202 fund reservation is issued, if—

(i) The delay has been for reasons beyond the Borrower's control;

(ii) The Borrower has done everything within its power to resolve the problems causing the delay;

(iii) All major problems have been resolved, or there is good reason to expect prompt resolution; and

(iv) There is good reason to expect the start of construction, rehabilitation, or acquisition with or without rehabilitation to begin within the extension period.

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section, the field office shall mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of loan cancellation must:

(i) Describe the reasons for the cancellation of the loan authority; and

(ii) Advise the Borrower that it may file an appeal of the cancellation with the field office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Borrower fails to file an appeal of the loan cancellation within 30

days of the receipt of the cancellation notice, the field office shall cancel the fund reservation and provide a written notice of the cancellation to the Borrower.

(3) If the Borrower files an appeal within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the appeal if the Borrower demonstrates that it is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without substantial rehabilitation.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Borrower. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Borrower in writing of the determination, and cancel the fund reservation.

3. In § 885.770, paragraph (a) is revised to read as follows:

§ 885.770 Duration of section 202 fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance under § 885.755.

(1) Subject to the approval of the Assistant Secretary, the field office may, at any time, issue a notice of intent to cancel the fund reservation if the field office determines that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(2) Subject to the approval of the Assistant Secretary, the field office shall issue a notice of intent to cancel the fund reservation if the construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation of a project is not begun within 18 months after the notice of section 202 fund reservation under § 885.755(a) is issued or, if applicable, within an extension of the 18-month period granted under paragraph (a)(3) of this section.

(3) The field office may extend the period specified in paragraph (a)(2) of this section up to 24 months after the notice of section 202 fund reservation is issued, if HUD determines that the Borrower is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without rehabilitation. The regional office may grant additional extensions of up to 36 months after the notice of section 202 fund reservation is issued, if—

(i) The delay has been for reasons beyond the Borrower's control;

(ii) The Borrower has done everything within its power to resolve the problems causing the delay;

(iii) All major problems have been resolved, or there is good reason to expect prompt resolution; and

(iv) There is good reason to expect the start of construction, rehabilitation, or acquisition with or without rehabilitation to begin within the extension period.

A fund reservation extension may affect the interest rate to be paid on the section 202 loan if the Borrower has made an election of the optional rate (see § 885.810(f)(2)(iv)).

* * * * *

Dated: February 15, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-5491 Filed 03-09-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-04]

Special Local Regulations for Marine Events; SAFEBOAT 90 Demonstrations; Town Point Park, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the SAFEBOAT 90 Demonstrations to be held in the vicinity of Town Point Park, on the Elizabeth River, at Norfolk, Virginia. The event will consist of water safety equipment demonstrations, including the firing of visual distress signals and a helicopter rescue demonstration. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life on navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.501 are effective from 11:30 a.m. to 6:30 p.m., March 17, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Nautical Adventures, Inc. submitted an application on February 10, 1990 to hold the SAFEBOAT 90 Demonstrations to be held in the vicinity of Town Point Park, on the Elizabeth River, at Norfolk, Virginia. The event will consist of water safety equipment demonstrations, including the firing of visual distress signals and a helicopter rescue demonstration. Since the waterway will not be closed for extended periods, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels. These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Local Notice to Mariners.

Authority: 33 U.S.C. 1233.

Dated: March 2, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 90-5529 Filed 3-9-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3724-3]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Hamilton Standard Division of United Technologies Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from the Hamilton Standard Division of United Technologies Corporation in Windsor Locks, Connecticut. The intended effect of this action is to approve the source-specific RACT determination made by the State in accordance with commitments made in its 1982 Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective on May 11, 1990, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On December 22, 1989, the State of Connecticut submitted a formal revision to its state implementation plan (SIP). The revision consists of State Order No. 8029 issued by the Connecticut Department of Environmental Protection (DEP) to Hamilton Standard Division of United Technologies Corporation in Windsor Locks, Connecticut. This State Order was issued to this facility to control volatile organic compound (VOC) emissions from this facility's VOC-emitting processes. The requirements of State Order No. 8029 constitute reasonably available control technology (RACT) for Hamilton Standard as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

Summary of RACT Determination

Hamilton Standard operates 56 vapor degreasers of which 21 were in use prior to July 1, 1980. The control of solvent metal cleaning operations in Connecticut is covered under subsection 22a-174-20(*l*), "Metal cleaning," of Connecticut's regulations. Final approval of this regulation was granted by EPA on February 1, 1984 (49 FR 3988). Under subparagraph 22a-174-20(*l*)(2)(iii) of Connecticut's original solvent metal cleaning regulation, however, open top vapor degreasers and conveyorized degreasers that were in operation prior to July 1, 1980 are exempt from meeting the control and operating requirements prescribed in subsection 22a-174-20(*l*). Therefore, all of the open-top vapor degreasers and conveyorized vapor degreasers at Hamilton Standard that were in operation prior to July 1, 1980 are exempt from meeting RACT under subsection 22a-174-20(*l*). These open-top vapor and conveyorized vapor degreasers are now being required to meet RACT pursuant to subsection 22a-174-20(ee).

Twenty-eight of 56 vapor degreasers at Hamilton Standard have been converted to or have always used either the solvents 1,1,1 tri-chloroethane or Freon TF which are two of the organic compounds which EPA has designated as having negligible photochemical reactivity. These compounds are not considered VOCs under the definition of VOC in Connecticut's SIP. As such, State Order No. 8029 does not require any control requirements on these 28 vapor degreasers. State Order No. 8029 does, however, contain requirements for the 28 vapor degreasers in case Hamilton Standard ever converts any of them to using a VOC. State Order No. 8029 requires Hamilton Standard to meet the control requirements of subsection 22a-174-20(*l*) of Connecticut's regulations and some additional requirements in paragraphs 7 and 10 of the State Order for any vapor degreaser that it converts back to using a VOC on the day it starts production using the VOC.

The remaining degreasers at Hamilton Standard continue to use VOC solvents. As RACT for these units, the State Order requires these units to meet the requirements in subsection 22a-174-20(*l*) of Connecticut's regulations (Connecticut's solvent metal cleaning regulation) as well as other additional requirements contained in the State Order which increase the stringency of the control requirements imposed on these degreasing units.

In addition to the facility's degreasing operations, Hamilton Standard has handwiping operations which use VOC to clean metal or fiberglass parts outside the confines of any degreaser. As RACT for these operations, the State Order requires that all dispensing containers be equipped with a cover and be closed when not in use, that all dirty rags and all rags which have previously been used be stored in covered containers, and that no rags be visibly dripping during use.

In addition, the facility operates solvent recovery stills. As RACT for these operations, the State Order requires Hamilton Standard to cease operation of any solvent recovery still whenever the condenser coil outlet water temperature exceeds 80 °F. This is the temperature above which the solvent recovery stills are achieving less than the minimum required ninety-five percent solvent recovery rate. The condenser coil outlet water temperature on each solvent recovery still is required to be monitored with an alarm which will be triggered should the condenser coil outlet water temperature exceed 80 °F. Furthermore, Hamilton Standard is required to store all waste VOC, before being recovered in the solvent recovery stills or before being sent out as a waste product, in closed containers which prevent the evaporation of VOC to the atmosphere.

Additionally, the State Order requires Hamilton Standard to maintain a recordkeeping system of all additions of solvent to each vapor degreaser using VOC. Further, Hamilton Standard is required to maintain a recordkeeping system of all waste VOC that is generated from these vapor degreasers. Hamilton Standard is also required to maintain a monthly recordkeeping system of all VOC used in the handwiping operations by VOC type.

EPA has reviewed State Order No. 8029 and has determined that the level of control required by this Order represents RACT for Hamilton Standard.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on May 11, 1990.

Final Action

EPA is approving Connecticut State Order No. 8029 as a revision to the Connecticut SIP. The provisions of State Order No. 8029 define and impose RACT on Hamilton Standard as required by subsection 22a-174-20(ee) of Connecticut's regulations.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 2, 1990.

Julie D. Belaga,

Regional Administrator, Region I.

Subpart H, part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart H—Connecticut

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(54) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(54) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 22, 1989.

(i) Incorporation by reference:

(A) Letter from the Connecticut Department of Environmental Protection dated December 22, 1989 submitting a revision to the Connecticut State Implementation Plan.

(b) State Order No. 8029, attached Compliance Timetable, and Tables A through I for Hamilton Standard Division of United Technologies Corporation in Windsor Locks, Connecticut. State Order No. 8029 was effective on November 29, 1989.

(ii) Additional materials:

(A) Technical Support Document prepared by the Connecticut DEP providing a complete description of the reasonably available control technology determination imposed on Hamilton Standard.

[FR Doc. 90-5612 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3731-3]

Approval and Promulgation of State Implementation Plans; Colorado; Oxygenated Fuels and Inspection/Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves revisions to the Colorado Carbon Monoxide (CO) and Ozone State Implementation Plan (SIP) submitted on July 29, 1987, by the Governor of Colorado. the CO SIP revision included: (1) Regulation No. 11 (Inspection/Maintenance (I/M) program) and (2) Regulation No. 13 (oxygenated fuels program). The Ozone SIP revision included Regulation No. 11 (the I/M program). The Regulations apply to the Boulder, Colorado Springs, Denver Metropolitan, and Fort Collins areas.

The revisions to Regulation No. 11 being approved today also incorporated earlier revisions submitted by the Governor of Colorado: (1) The legislative amendments authorizing the Regulation No. 11 revisions were submitted on July 1, 1986, and (2) the revised emission standards (cut points) for 1976 and 1977 vehicles were submitted January 30, 1986. These earlier revisions are not being acted on separately because they are incorporated in the July 29, 1987, submittal. The July 29, 1987, revisions are being approved because they reduce CO and ozone levels and, therefore, strengthen the existing SIPs.

EFFECTIVE DATE: This approval will be effective on April 11, 1990.

ADDRESSES: Written comments should be addressed to:

Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Copies of the state submittal are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1773, (FTS) 564-1773.

SUPPLEMENTARY INFORMATION: Today's rulemaking was proposed in the June 27, 1989, **Federal Register** (54 FR 27036). On July 14, 1987 (52 FR 26419), EPA proposed to disapprove the Colorado CO SIP for the metropolitan Denver area for failing to demonstrate attainment of the CO standard by December 31, 1987, or any fixed date in the near term after 1987. In the General Preamble of that same notice, EPA also stated its intention to review the adequacy of the CO and Ozone SIPs in other areas. The action described below does not alter the July 14, 1987, proposed action.

On July 29, 1987, the Governor of Colorado submitted revisions to the Colorado CO and Ozone SIP. The CO SIP revision included: (1) Regulation No. 11 (Inspection/Maintenance (I/M) program) and (2) Regulation No. 13 (oxygenated fuels program). The Ozone SIP revision included Regulation No. 11 (the I/M program).

EPA is approving these revisions because they strengthen the existing SIP by significantly reducing CO and ozone levels. The revisions also aid in attaining the standard at an earlier date, demonstrate that the State is currently making efforts to submit a plan that will produce timely attainment of the standard and will provide immediate health benefits to the population of the Boulder, Colorado Springs, Denver Metropolitan, and Fort Collins areas (inclusion of Greeley in the I/M program is the subject of a separate notice). However, these revisions are not sufficient to provide for attainment of the CO standard in the Denver/Boulder area in the near term. When a revised SIP is submitted that does address the issue of the attainment of the CO standard, the amount of emission reduction from Regulations 11 and 13 must be recalculated and related to the new attainment demonstration.

Regulation No. 11 I/M Amendments

The revisions to the I/M program (Regulation No. 11) were adopted by the Colorado Air Quality Control Commission (AQCC) on January 15, 1987, and went into effect on July 1, 1987. Regulation No. 11 applies to the Denver Metropolitan, Boulder, Colorado Springs, Fort Collins and Greeley areas. The revisions provide for use of computerized "BAR 84" analyzers, registration enforcement, increased anti-tampering provisions[1], expanded coverage to all pre-1968 vehicles without antique license plates, and increased waiver cost limits.

The State of Colorado evaluated the old I/M program in 1985 and determined that the Mobile 3 credit for that program should be reduced by 45%. This reduced credit is due to design flaws in the old I/M program which caused law failure rate, low compliance rate and high waiver rate. The overall effectiveness of the old program was then adjusted given the reduced credit. When compared to the revised I/M program, the calculations show that these enhancements are expected to reduce 1992 mobile source CO and hydrocarbon (HC) emissions by 18% and 9.2%, respectively. These reductions are calculated from the Mobile 3 runs provided by the State of Colorado. As stated earlier, emission reduction credit is not being addressed at this time. Recalculation of such credit will be determined when a revised SIP is submitted.

The revisions to Regulation No. 11 being proposed for approval today also incorporate earlier revisions submitted by the Governor of Colorado: (1) The legislative amendments authorizing the Regulation No. 11 revisions were submitted on July 1, 1986, and (2) the revised emission standards for 1976 and 1977 vehicles were submitted January 30, 1986. The July 1, 1986 submittal contained only the authority to revise Regulation No. 11. EPA determined that the regulation, as well as the authority, was necessary to evaluate the State submittal. The January 30, 1986, submittal contained more stringent cut points for 1976 and 1977 model year vehicles. EPA considered the revisions minor and deferred action pending submittal of more substantial revisions.

Regulation No. 13 Oxygenated Fuels Program

Regulation No. 13 was adopted by the AQCC on July 29, 1987. The regulation requires all gasoline sold in the CO nonattainment areas (Boulder, Colorado Springs, Denver Metropolitan, Fort Collins and Greeley) to contain at least 1.5% oxygen from January 1, 1988 to March 1, 1988; and thereafter requires at least 2% oxygen during each period from November 1 to March 1.

[1] This includes catalyst replacement when both the fuel-filler restrictor is tampered and there is a positive Plumtesmo test. EPA allows no emissions credit for this type of inlet inspection.

The regulation allows the use of either gasohol (90% gasoline and 10% ethanol) or a mixture of gasoline and methyl-tertiary-butyl-ether (MTBE). Other EPA-approved alcohol blends could also be used, but they have not yet been used.

The State estimates that ambient CO levels will be reduced by about 14% through this requirement and that retail gasoline prices will be increased by 0.05 cents to 3.5 cents per gallon. Based on the emission testing and EPA Technical Report EPA-AA-TSS-PA-87-4, EPA believes that the 14% air quality benefit given in the State submittal of Regulation No. 13 is reasonable. EPA analysis of the cost estimates given for Regulation No. 13 is that these are also reasonable estimates.

As stated in Regulation No. 13, the AQCC has existing authority to require oxygenated fuels. Earlier EPA analysis confirmed this authority.

The State has also evaluated the impact of the regulation on ambient levels of ozone, oxides of nitrogen and aldehydes, and concluded that there would not be a significant increase in concentrations of these pollutants. EPA agrees with the State's evaluation, in that it believes that potential increases will be more than offset by the impact of vehicle turnover resulting in more vehicles with advanced emission controls. Ozone and aldehyde levels will also be mitigated by the decreases in hydrocarbon emissions produced by the Regulation 11 amendments and exhaust and evaporative hydrocarbon emission decreases discussed below. Both ozone and aldehydes and photochemically produced from hydrocarbons and oxides of nitrogen. The levels of these pollutants should actually continue to decline in the future due to the federally-required controls on new vehicles and efforts by the State of Colorado to reduce the rate of growth in vehicle miles traveled.

The impact of the oxygenated fuels regulation on increasing evaporative emissions of HC requires explanation. Gasohol has higher volatility than the base gasoline from which it is made, and increased HC emissions due to higher volatility could result in higher levels of ozone. MTBE does not increase gasoline volatility nearly as much. MTBE would also be blended to take advantage of its octane value, and would not likely be used in amounts which would significantly increase volatility when not required by Regulation No. 13, due to its higher cost. Regulation No. 13 only requires oxygenated fuel be used in the winter, when evaporative emissions do not lead to ozone formation. There may

be increased gasohol use in the summer, however, from a carry-over effect.

The Denver Metropolitan Area Ozone SIP was approved by EPA on December 12, 1983 (48 FR 55284). The control measures in the SIP included I/M, stationary source controls, and various transportation control measures including mass transit. As discussed below, the State of Colorado has implemented measures since the approval of the Ozone SIP which will offset any increased HC emissions due to oxygenated fuels.

On March 22, 1989, EPA published a Notice of Rulemaking on controlling gasoline volatility (54 FR 11868). A Regulatory Impact Analysis (RIA) was performed for this action. The RIA included an estimate of the increase in HC emissions, a precursor to ozone, resulting from the use of gasohol. According to the RIA, if 40% of the fuel used in mobile sources was gasohol, HC emissions would increase 5.6 to 12.6% depending on the Reid Vapor Pressure (RVP) of the base gasoline. Gasoline in Colorado (required to meet ASTM volatility standards since July 1, 1986) has a RVP around the midpoint of the range defined in the RIA. This would put the estimated HC increase at about 9.1% with 40% gasohol use.

The 9.1% increase is a weighted average of the evaporative emissions increase due to the increase in the volatility of the blend and the exhaust HC emission reduction due to the better combustion of the fuel resulting from the additional oxygen provided by the ethanol. The RIA used an estimated for the reduction in exhaust emissions of 2.5%.

Utilizing the same methodology, but with Colorado test data for the exhaust hydrocarbon reduction, the Colorado test results indicate a reduction in HC exhaust emissions of 9.2%. The resulting estimate of the overall increase in HC emissions from 40% gasohol use in the Denver metropolitan area is 7.7%. In fact, the summertime induced use of gasohol from the oxygenated fuels program is negligible. Less than 5% of the gasoline sold during the first year of the program contained ethanol.

There are two mitigating factors, each sufficient to overcome any emission increase due to gasohol use. First, there is the decrease in overall vehicle HC emissions due to the Regulation No. 11 amendments discussed earlier. Second, there is the previously mentioned ASTM volatility requirement which is not part of the Denver Metropolitan area Ozone SIP. The Colorado gasoline volatility controls have provided more than enough reduction to offset any evaporative emission increase due to gasohol.

In summary, the estimated increase in evaporative HC emissions due to the use of gasohol would be more than overcome by: (1) Reductions in exhaust HC attributable to the new I/M program, (2) emission reductions of exhaust HC due to the cleaner burning properties of gasohol, and (3) evaporative emission reductions from ASTM volatility requirements for gasoline.

In developing this regulation, the State and EPA conducted extensive meetings with affected groups, including automobile manufacturers, the petroleum industry, and the oxygenated fuels industry. The State of Colorado, with EPA assistance, tested 140 vehicles using the Federal Test Procedure. A task force appointed by the Governor of Colorado in June of 1986 held extensive meetings before recommending adoption of the program in October of 1986. These recommendations were submitted to the Denver Metropolitan Air Quality Council, the lead planning agency for the Denver metropolitan area, which then recommended their adoption by the AQCC. The AQCC formed a subcommittee which, in turn, held separate hearings on emission reduction benefits, effects on materials and vehicle drivability, and cost and supply issues before recommending adoption of the program to the full Commission.

Comments

EPA received one set of comments in response to the June 27, 1989, Proposed Rule, which was from Amoco Corporation. Amoco commented favorably concerning the I/M program enhancements and generally favorably concerning the oxygenated fuels program. Amoco expressed concerns about the capability of oxygenated fuels with vehicle materials, but presented no data or new information. Since this issue has been extensively studied by both EPA and the State, EPA does not believe this issue should hold up approval of the program. Colorado is continuing to monitor any vehicle material compatibility complaints. Amoco also commented that EPA did not make the finding required under 211(c)(4) (discussed below). As stated in the June 27, proposal and reiterated below, EPA does not believe that oxygenated fuels are preempted by 211(c)(4). Amoco implied that EPA's proposed decision that a finding under 211(c)(4) was not necessary meant that EPA had not performed a technical evaluation of the Colorado oxygenated fuels program. This is not the case. As discussed above, EPA has evaluated this program, concurs with the State on the benefits and costs, and finds that the benefits are consistent with EPA Technical Report EPA-AA-TSS-PA-87-4 on alternate fuels. Amoco apparently confuses EPA's statement that it has neither regulated oxygenated fuels under section 211(c) nor found that such regulation is unnecessary, with a finding that Colorado's oxygenated fuels program neither is nor is not necessary to produce attainment of the CO standard. In fact, as described below, EPA concluded that since state oxygenated fuels programs are not generally preempted by section 211(c)(4), EPA need not make any finding concerning the necessity of such a program in Colorado prior to approval of such program as part of the CO SIP.

Section 211(c)(4)(A) states:

> Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless (the) state prohibition or control is identical to the prohibition or control prescribed by the Administrator.

Section 211(c)(4) provides that Federal preemption will not be a bar to a State-adopted fuel control measure if the measure is included in the SIP for such State and only if the Administrator approves the measure into the State's SIP on the ground:

> That the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

Thus, the threshold question in analyzing whether section 211(c)(4) bars EPA from approving Regulation No. 13 is whether EPA has preempted such a State measure in either of the two ways described in paragraph (A). EPA does not believe that either form of preemption has occurred.

First, EPA has not made the finding, described in subparagraph (i) of paragraph (A), that no fuel control or prohibition under paragraph (1) of section 211(c) is necessary; and EPA clearly has not published any such finding in the **Federal Register**.

Second, EPA does not believe that it has prescribed the type of fuel control described in subparagraph (II) of paragraph (A). As in the case of subparagraph (i), EPA interprets

subparagraph (ii)'s reference to "a control or prohibition applicable to such fuel or fuel additive" as including only the same type of fuel control that the State in question is attempting to prescribe. Under this interpretation, section 211(c)(4)(A)'s prohibition of the State's adoption of a particular type of fuel control would be triggered only if EPA has already prescribed, by regulation under section 211(c)(1), the same type of fuel control proffered by the State—in this case, a control on the oxygen content of fuels. Since EPA has not prescribed any control on the oxygen content of any fuel by section 211(c) rulemaking[2], in the Agency's view the preemption described in subparagraph (ii) has not occured and hence EPA is free to approve Regulation No. 13 into the SIP.

Lastly, Amoco stated that of the three programs listed above which will overcome any impact of increased summer gasohol use, only the exhaust emission reductions due to gasohol were not part of the Denver area ozone SIP, and is available for offset. This is also not true. None of these measures were included in the ozone SIP, and all are available for offsets. The winter use of gasohol during the 1988–1989 second Colorado oxygenated fuel program year was only 6% of the gasoline sold. The worst case analysis in the June 27, 1989, proposal (repeated above) was that summer carry-over of gasohol might be 40% of the gasoline sold. Figures for the current summer gasohol use are not available, but are certainly less than 6%. Furthermore, ambient monitoring over the last 3 years in the Denver area have not indicated that the ozone standard is being violated.

Final Action

EPA approves Regulation No. 13, "Oxygenated Fuels Program", and the revisions to Regulation No. 11, the I/M program, because they strengthen the existing CO SIP. The Regulation No. 11 amendments are also being approved as strengthening the Ozone SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

[2] EPA has established limits on oxygen content for certain new fuels that have been granted waivers under section 211(f) of the Act for introduction into commerce.

Under 5 U.S.C. 605(b), I certify that this SIP Revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 20, 1990.

William K. Reilly,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart G—Colorado

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.320 is amended by adding paragraph (c)(46) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(46) On July 29, 1987, the Governor submitted:

(1) Amendments to Colorado Regulation No. 11 (Inspection/Maintenance (I/M) program) and

(2) Regulation No. 13 (oxygenated fuels program).

(i) Incorporation by reference:

(A) Regulation No. 11, revised January 15, 1987, effective March 2, 1987.

(B) Regulation No. 13, adopted June 29, 1987, effective July 30, 1987.

* * * * *

[FR Doc. 90-5611 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[NC-041; FRL-3727-2]

Approval and Promulgation of Implementation Plans; North Carolina; Miscellaneous SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 14, 1989, the State of North Carolina submitted several different revisions to its State Implementation Plan (SIP). 15 NCAC 2D.0401, Purpose, was amended to clarify that no source of air pollution may cause or contribute to a violation of an ambient air quality standard. 2D.0404, Carbon Monoxide was revised to correspond to the federal standard. 2D.0501, Compliance with Emission Control Standards, was amended by adding an optional test method for particulate matter. 2D.0511 Particulates: SO_2 from Lightweight Aggregate Processes was amended by deleting the SO_2 emissions standard. 2D.0516, Sulfur Dioxide Emissions from Fuel Burning Installations was revised to clarify North Carolina's policy on sulfur dioxide emissions. 2D.0519, Control of Nitrogen Dioxide Emissions, was amended to supplement the current nitrogen dioxide emission standards for certain boilers. 2H.0601, Purpose and Scope, was amended to prohibit construction or operation without a permit. 2H.0603, Applications, was amended to streamline and facilitate the processing of permits. 2H.0606, Delegations of Authority was amended by changing one of the titles. Today, EPA is approving these revisions.

DATES: This action will be effective May 11, 1990, unless notice is received by April 11, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Air Quality Section, North Carolina Department of, Environment, Health and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina 27611.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes of EPA Region IV at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On July 14, 1989, the State of North Carolina submitted several different regulations to EPA as SIP revisions. Revisions to Regulation 15 NCAC 2D.0104, .0530, .0531 and .0532 were addressed in a previous **Federal Register** notice.

This notice addresses the following regulations:

1. Regulation 15NCAC 2D.0401, Purpose.

This regulation did not expressly prohibit a source from violating and ambient standard, but the prohibition was implied. 2D.0401 has been amended to clarify that no source of air pollution may cause or contribute to a violation of any ambient air quality standard.

2. Regulation 15 NCAC 2D.0404, Carbon Monoxide.

The standards contained in this regulation have been revised to correspond to the federal standards by interchanging the parts-per-million limit with the milligram of microgram-per-cubic-meter limit. Also specified in 2D.0404 is the minimum amount of data needed to determine the validity of an average and to describe round-off procedures.

3. Regulations 15 NCAC 2D.0501, Compliance with Emission Control Standards.

An optional test method for particulate matter, Method 17, has been added. This revision is based on several sources' interest in using Method 17 in place of Method 5.

4. Regulation 15 NCAC 2D.0511, Particulate: SO_2 from Lightweight Aggregate Processes.

The sulfur dioxide emissions standard has been deleted. Sulfur dioxide emissions from lightweight aggregate processes will not be limited by 15 NCAC 2D.0516.

5. Regulation 15 NCAC 2D.0516, Sulfur Dioxide Emissions from Fuel Burning Installations.

The sulfur dioxide emission limit has been extended to cover all sources of combustion instead of just sources of fuel combustion. Also, the determination of sulfur dioxide emissions has been clarified to mean that when determining sulfur dioxide compliance, the sulfur contained in ore and in fuel is included. The North Carolina agency has been in disagreement over the interpretation of 2D.0511 with a lightweight aggregate manufacturer. The revisions to 2D.0511 and 2D.0516 clarify North Carolina's policy on sulfur dioxide emissions.

6. Regulation 15 NCAC 2D.0519, Control of Nitrogen Dioxide Emissions.

This regulation has been amended to supplement the current nitrogen dioxide emission standards for oil-fired, gas-fired, and coal-fired boilers with a capacity of 250 million BTU or more with nitrogen oxides emission standards. According to the revision, a boiler has to comply with both the nitrogen dioxide and the nitrogen oxides emission standards. Also added to 2D.0519 is a procedure to determine compliance when a boiler burns multiple fuels.

7. Regulation 15 NCAC 2H.0601, Purpose and Scope.

The amendment to 2H.0601 expressly prohibits the owner or operator of a source required to have a permit to begin construction or operation of a new source or to modify an existing source without first receiving a permit. The reference for complex source permit requirements has been updated to include the permit fee regulation.

8. Regulation 15 NCAC 2H.0603, Applications.

This regulation has been amended to streamline and facilitate the processing of permits. The amendment removed the requirement to have a public hearing before issuance of a permit that contains a condition requiring controls more stringent than the applicable emission standards in 2D.0500, Emission Control Standards, when such condition is necesssary to protect the ambient air quality standards. Instead, such permit would be advertised and made available for public review and comment at least 30 days before issuance with an opportunity for a public hearing request.

9. Regulation 15 NCAC 2H.0606, Delegation of Authority.

The title "Assistant Chief for Permitting" has been changed to "Head of Permits and Operation Branch", the current title.

Final Action

Since the revisions to North Carolina regulations 2D.0401, 2D.0404, 2D.0501, 2D.0511, 2D.0516, 2D.0519, 2H.0601, 2H.0603, and 2H.0606 are consistent with EPA policy and requirements, they are hereby approved.

The public should be advised that this action will be effective May 11, 1990. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 1990. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

Regulatory Process

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. These rules are equivalent to the federally approved State regulations and maintain the status quo. Sources have not been adversely affected by the State regulations; therefore the conclusion can be drawn that small sources in North Carolina will not be adversely affected by this decision.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 6, 1989. The Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting, Recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 8, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(63) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(63) Miscellaneous revisions to the North Carolina State Implementation Plan which were submitted on July 14, 1989.

(i) Incorporation by reference.

(A) Revisions to North Carolina Administrative Code which became State effective on October 1, 1989 are as follows:

2D.0401, Purpose, as amended
2D.0404, Carbon Monoxide, as amended
2D.0407, Nitrogen Dioxide, as amended
2D.0501, Compliance with Emission Control Standards, (c)(3)
2D.0511, Particulates from Lightweight Aggregate Processes, (d)
2D.0516, Sulfur Dioxide Emissions from Combustion Sources, (a)
2D.0519, Control of Nitrogen Dioxide and Nitrogen Oxides Emissions, as amended
2H.0601, Purpose and Scope, (a), (c), and (d)
2H.0603, Applications, (d) and (e)
2H.0606, Delegation of Authority, as amended

(ii) Additional material

(A) Letter of July 14, 1989 submitting the SIP revisions

[FR Doc. 90-4812 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3744-1]

Wisconsin: Schedule of Compliance for Modification of Wisconsin's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region V.

ACTION: Notice of Wisconsin's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, U.S. EPA promulgated Amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications, if they cannot meet the prescribed deadlines. U.S. EPA is today publishing a compliance schedule for Wisconsin to modify its program, in accordance with § 271.21(g) to adopt Federal program modifications.

EFFECTIVE DATE: March 12, 1990.

FOR FURTHER INFORMATION CONTACT: Brian Barwick, Wisconsin Regulatory Specialist, Office of RCRA, U.S. EPA, Region V, 230 South Dearborn Street, 5HR-JCK-13, Chicago, Illinois 60604, (312) 886-6085, (FTS: 8-886-6085).

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by U.S. EPA, if the Agency finds that the State program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). U.S. EPA regulations for final authorization appear at 40 CFR 271.1-271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Wisconsin

Wisconsin received final authorization of its hazardous waste program on January 31, 1986 (see 51 FR 3783, January 30, 1986). Effective June 6, 1989 and January 22, 1990, EPA granted authorization to Wisconsin for revisions to its hazardous waste program (see 54 FR 22278 and 54 FR 48243). Today U.S. EPA is publishing a compliance schedule for Wisconsin to complete program revisions for the following Federal regulations:

- Dioxin Listing and Management Standards, 50 FR 1978;*
- Liquids in Landfills, 50 FR 28702;*
- Double Liners, 50 FR 28702;*
- Fuel Labeling, 50 FR 28702;*
- Corrective Action, 50 FR 28702;*
- Pre-Construction Ban, 50 FR 28702;*
- Permit Life, 50 FR 28702;*
- Omnibus Provision, 50 FR 28702;*
- Interim Status, 50 FR 28702;*
- Hazardous Waste Exports, 50 FR 28702;*
- Exposure Information, 50 FR 28702;*
- Used Oil, 50 FR 49164;*
- Paint Filter Test: Correction, 51 FR 19176;*
- Hazardous Waste Tank Systems, 51 FR 25422;*
- Biennial Reports; Correction, 51 FR 28556;*
- Exports of Hazardous Waste, 51 FR 28664;*
- Hazardous Waste Tank Systems: Correction, 51 FR 29430;*
- Listing of EBDC, 51 FR 37725;*
- Land Disposal Restrictions, 51 FR 40572;*
- Technical Corrections to the Hazardous Waste and Used Oil Fuel Rule, 52 FR 11819;*
- Land Disposal Restrictions: Correction, 52 FR 21010;*
- Hazardous Constituents for Ground-Water Monitoring List 1, 52 FR 25942;
- Definition of Hazardous Waste: Correction, 52 FR 26012;
- Miscellaneous Units, 52 FR 46946;
- Listing of Commercial Chemical Products/Appendix VIII: Correction, 53 FR 13382.

* Promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984.

The adoption deadline under 40 CFR 271.21 for the Federal regulations listed above was July 1, 1989.

For the most part, State program revisions for these rules have been delayed because the State is currently reorganizing and recodifying its hazardous waste rules. Initially, Wisconsin intended to complete reorganization and recodification of its rules by December 31, 1989. As part of this effort, the State is incorporating the Federal regulations that were due on July 1, 1988, and July 1, 1989. However, completion of the State rules has been delayed by unexpected circumstances:

(1) The work involved was unexpectedly time consuming.

(2) The initial steps in the State rulemaking process took longer than anticipated.

(3) Other priority activities required the attention of key staff.

As a result, the State is late in incorporating both the Federal regulations that were due on July 1, 1988, and July 1, 1989.

The State is incorporating several Federal regulations into the State rules earlier than required under 40 CFR 271.21. Also, recodification and reorganization of the State's rules should greatly enhance the public's ability to comprehend the requirements of Wisconsin's hazardous waste rules. For these reasons, U.S. EPA has granted the State additional time to complete its program revisions.

The State has agreed to complete the needed program revisions according to the following schedule:

(1) Submit rule adoption request yellowsheet to appropriate State officials, June 7, 1990.

(2) Submit rule adoption request greensheet to appropriate State officials, July 5, 1990.

(3) Wisconsin Department of Natural Resources Board meeting to consider rule adoption request, July 25-26, 1990.

(4) Submit new State rules to the Wisconsin legislature for approval, August 1, 1990.

(5) File approved rules with the Wisconsin River Revisor of Statutes, October 7, 1990.

(6) New State rules become effective, December 30, 1990.

Wisconsin expects to submit an application to U.S. EPA for authorization of the above-mentioned program revisions by March 1, 1991.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 90-5589 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3732-2]

Rhode Island; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final authorization on application of Rhode Island for program revision.

SUMMARY: Rhode Island has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Rhode Island's application and has reached a decision that Rhode Island's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Rhode Island to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final Authorization for Rhode Island shall be effective at 1:00 pm on March 26, 1990.

FOR FURTHER INFORMATION CONTACT: Frank Battaglia, MA & RI Waste Regulation Section, US EPA, HRR-CAN 3, JFK Federal Building, Boston, Massachusetts 02203, Phone: (617) 573-9643.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. Rhode Island

Rhode Island initially received Final Authorization of its Hazardous Waste Program on January 31, 1986 (51 FR 3780, January 30, 1986). On April 3, 1989 Rhode Island submitted a Final Program Revision Application for non-HSWA requirements promulgated through June 30, 1985. On September 13, 1989, EPA published a proposal to approve Rhode Island's Application for Program Revision in Accordance with 40 CFR 271.21(b)(4). No public comments were received prior to the end of the public comment period on October 13, 1989.

EPA has reviewed Rhode Island's application, and has made a final decision that Rhode Island's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. EPA recognizes Rhode Island's limitations on the award of reasonable Attorney fees and other litigation costs to a party who substantially prevails in Judicial review of a state agency action, as specified at 5 U.S.C. 552(a)(4)(E). For a complete discussion of these provisions, see 54 FR 37817 dated September 13, 1989. Specific provisions which are included in the Rhode Island Program Authorization revision made today are listed in Table I below.

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION

Federal requirement	State authority
1. Biennial Report, 48 FR 3977-3983, January 28, 1983.	Rule 5.05.[1] Rule 5.06. Rule 7.01(E). Rule 9.10. Rule 9.14. Rule 9.22.
2. Permit Rules: Settlement Agreement, 48 FR 39622, September 1, 1983.	Rule 8.01(B). Rule 8.01(C). Rule 2.02.

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION—Continued

Federal requirement	State authority
3. Interim Status Standards—Applicability, 48 FR 52718-52720, November 22, 1983 and 49 FR 46095, November 21, 1984.	Rule 7.01(E).
4. Chlorinated Aliphatic Hydrocarbon Listing, 49 FR 5312-5313, February 10, 1984.	Rule 3.25. Rule 3.69.
5. National Uniform Manifest, 49 FR 10490-10510, March 20, 1984.	Rule 3.45. Rule 5.03(B). Rule 5.03(C). Rule 5.03(G).
6. Permit Rules—Settlement Agreement, 49 FR 17716-17719, April 24, 1984.	Rule 7.09(G).
7. Correction to Test Methods Manual, 49 FR 47391, December 4, 1984.	Rule 5.08. Rule 9.21.
8. Satellite Accumulation, 49 FR 49571-49572, December 20, 1984.	Rule 5.02.
9. Redefinition of Solid Waste, 50 FR 614-668, January 4, 1985.	Rule 3.05. Rule 3.15. Rule 3.25. Rule 3.34. Rule 3.36. Rule 3.69. Rule 7.01(A)(2). Rule 7.01(E). Rule 11.00.
10. Interim Status Standards for Landfills, 50 FR 16044-16048, April 23, 1985.	Rule 7.01(E).
11. RCRA Section 3006(F): Availability of Information, 40 CFR part 2, subpart A, 5 U.S.C. 552.	RIGL 38-2-2.[2] RIGL 38-2-3. RIGL 38-2-4. RIGL 38-2-7. RIGL 38-2-8. RIGL 38-2-9. RIGL 42-92.

[1] Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal (Rule).

[2] Rhode Island General Law (RIGL).

Rhode Island is not seeking authorization to operate on Indian Lands.

C. Decision

I conclude that Rhode Island's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Rhode Island is granted final authorization to operate its hazardous waste program as revised. Rhode Island now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its program revision application and previously approved authorities. Rhode Island also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Rhode Island's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities, and therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 21, 1990.

Julie D. Belaga,

Regional Administrator.

[FR Doc. 90-5588 Filed 3-9-90; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Endangered Status for Chimpanzee and Pygmy Chimpanzee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) reclassifies wild populations of the chimpanzee and all populations of the pygmy chimpanzee from threatened to endangered status. Both species have declined through such problems as massive habitat destruction, excessive hunting and capture by people, and lack of effective national and international controls. This rule will enhance the protection of the Endangered Species Act of 1973, as amended, for these species. Captive populations of the chimpanzee will continue to be classified as threatened, and individuals of that species in the United States will continue to be covered by a special regulation allowing activities otherwise prohibited.

EFFECTIVE DATE: April 11, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief; Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (703-358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION:

Background

The genus *Pan* contains two species: the chimpanzee (*P. troglodytes*) and the pygmy chimpanzee (*P. paniscus*). There is little overall difference in size between the two species, both weighing up to about 100 pounds (45 kilograms) in the wild. However, *P. paniscus* has relatively larger lower limbs and a narrower chest than does *P. troglodytes*. The Chimpanzee is known to have occurred originally in 25 countries of equatorial Africa, from Senegal in the west to Tanzania in the east. The pygmy chimpanzee is found only in the nation of Zaire, and only to the south of the Zaire River. The ranges of the two species are not known to overlap.

In the **Federal Register** of October 19, 1976 (41 FR 45993), the Service classified both the chimpanzee and pygmy chimpanzee as threatened species, pursuant to the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). Cited problems included human destruction of natural habitat, capture and export for research laboratories and zoos, the spread of disease from people to chimpanzees, and ineffectiveness of existing regulatory mechanisms. Simultaneously, the Service issued a special regulation providing that the prohibitions that generally cover all threatened species would not apply to live *P. troglodytes* and *P. paniscus* held in captivity in the United States on the effective date of the rule, or to the progeny of such animals, or to the progeny of chimpanzees legally imported into the United States after the effective date of the rule. This exemption was intended to facilitate legitimate activities of U.S. research institutions, zoos, and entertainment operations, without affecting wild chimpanzee populations.

Within the last decade there have been increasing indications that the status of wild chimpanzees is deteriorating and that most populations are continuing to decline. On November 4, 1987, the Service received a petition from the Humane Society of the United States, World Wildlife Fund, and Jane Goodall Institute, requesting that *P. troglodytes* be legally reclassified from threatened to endangered. The petition was accompanied by a detailed report from the Committee for Conservation and Care of Chimpanzees (Teleki 1987). This report cites practically all pertinent recent literature on the status of the chimpanzee in the wild, and was prepared with the assistance of numerous field research workers. It points out that the chimpanzee has declined drastically because of such problems as massive habitat destruction, population fragmentation, excessive local hunting, and international trade. On February 4, 1988, the Service made a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted. In the **Federal Register** of March 23, 1988 (56 FR 9460), the Service published this finding and announced a status review of both *P. troglodytes* and *P. paniscus*. The comment period for the review ended on July 21, 1988.

During the review period, the Service received 40 comments from major authorities and organizations, and from governments of nations with wild chimpanzee populations, all of which agreed with the petition and/or provided additional information lending support. Of these, 17 were from parties who actually have studied chimpanzees in the wild. In addition, during the review period, 54,212 supporting letters and postcards were received from the public. Several thousand more supporting comments arrived after the end of the comment period.

The Service received six comments opposing reclassification during the review period, and several more afterwards. None of these comments provided information about the status of chimpanzees in the wild, but they did make three general points: (1) The petition and accompanying report do not present a complete or accurate picture, and contain errors; (2) any plans for reclassification should await the results of a prospective National Institutes of Health survey of chimpanzees and other primates in Africa; and (3) chimpanzees are important in biomedical research, no

animals have been imported to the United States for such purposes in the last decade, and reclassification to endangered would interfere with study, transportation, and propagation of animals already here.

With respect to the first point, the Service is satisfied that the report by the Committee for Conservation and Care of Chimpanzees is reliable and contains much valuable information derived in large part from persons who have observed first hand the situation in the wild. Its overall assessment corresponds closely with that found in a new International Union for Conservation of Nature and Natural Resources (IUCN) Red Data Book, *Threatened Primates of Africa* (Lee, Thornback, and Bennett, 1988), which became available to the Service following the review period. The indicated errors seem to be mostly minor typographical ones. The report acknowledges that data are limited for some areas and that additional survey work is urgently needed. However, and with respect to the second point above, major new field surveys would take years to complete, and the Act requires that classification be based on the best data available and that decisions on petitions be made within 12 months of receipt. The report, the IUCN Red Data Book, and other currently available information provide a sufficiently comprehensive picture of the chimpanzee's status to allow assignment of a legal classification.

With respect to the third point, the chimpanzee (*P. troglodytes*) is considered to be of much importance in biomedical and other kinds of research, and is also held in captivity for use by zoos, as pets, and in entertainment. The petition and supporting documents and comments dealt primarily with status in the wild, and not with the viability of captive populations. There are questions about whether and how many such populations are indeed viable, but to the extent that self-sustaining breeding groups of captive *troglodytes* provide surplus animals for research and other purposes, there may be reduced probability that other individuals of that species will be removed from the wild. There has been no major legal importation of wild chimpanzees into the United States for about a decade, and recently passed legislation would prohibit investigators supported by Federal funds from using chimpanzees taken from the wild. At present, research work continues in the United States through the use of captive breeding groups. Without the availability of such groups, the relevant research might be done by others, perhaps in foreign countries and with wild-caught animals and their progeny. This line of reasoning has been questioned, but suggests that severe restrictions on use of captive animals in the United States might discourage propagation efforts and lead to a decline in the population here, and possibly contribute to greater demand for wild-caught animals elsewhere.

There is controversy regarding the viability and fecundity of over-all captive populations, but management of certain captive breeding groups seems to be becoming more sophisticated and successful. A studbook for *P. troglodytes* has been developed, and proposals to establish a Species Survival Plan are being prepared by members of the American Association of Zoological Parks and Aquariums. These plans are designed to maintain the genetic diversity of the captive population. Approximately 240 *P. troglodytes* are held by the Association's member institutions. The extent of breeding among *P. troglodytes* held as private pets or for entertainment purposes is not known, and neither is the number of individuals involved, but there has been one estimate of at least 200.

From 1,100 to 1,450 *P. troglodytes* are held by biomedical facilities in the United States. Many of these animals have been used in various studies of infectious diseases and are not suitable for breeding programs. Furthermore, eight institutions hold most of these animals, and all but one currently provide records to the International Species Inventory System. Five of the eight are part of the National Chimpanzee Breeding Program coordinated and supported by the National Institutes of Health. This program now has about 400 animals. Its immediate goal is to augment the breeding population with half of the offspring (about 35 animals/year). In addition, the National Institutes of Health has funded research directed at increasing the breeding capability of the captive population. Finally, there have been promising findings that may enhance this population and reduce the need for additional animals for research, especially through development of a means to distinguish chimpanzees exposed to, but not infected with, non-A/non-B hepatitis virus.

There are also over 1,000 captive *P. troglodytes* in Europe, including about 300 in biomedical research facilities and 550 in zoos. Many of these animals are in groups that are being managed with a stated objective of achieving self-sustaining breeding populations (the extent to which this objective may be attainable is not yet known). In addition, there are at least 300 captive members of this species in Japan, including over 100 in research facilities. While the previously mentioned groups are thought to be the largest, there are indefinite numbers of *P. troglodytes* in zoos and research facilities in other parts of the world, including about 60 in zoos in Australia and New Zealand.

In the **Federal Register** of December 28, 1988 (53 FR 52452), the Service announced its finding that reclassification of wild populations of the chimpanzee from threatened to endangered was warranted. In the **Federal Register** of February 24, 1989 (54 FR 8152), the Service proposed to implement such reclassification. At the same time, the Service announced that its status review had indicated that the pygmy chimpanzee should be reclassified from threatened to endangered, and such reclassification was proposed. The latter species is represented by fewer than 100 captive individuals throughout the world.

Partly in consideration of available information on the management situation, the Service did not propose reclassification of captive *P. troglodytes*. Those populations in the United States still will be covered by provisions of the special regulation of October 19, 1976. The Service will monitor captive status by requesting an annual report from each major facility in the United States holding chimpanzees, relative to numbers, mortality, breeding success, and other pertinent factors. The proposal was, and this final rule is, restricted to reclassification of the species in the wild, which evidently was the primary objective of the petition.

Summary of Comments and Recommendations

In the proposed rule of February 24, 1989, and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Cables were sent to United States embassies in 22 of the countries that have or had wild chimpanzee populations, requesting new data and the comments of the governments of the countries. These cables yielded 14 responses; 6 expressed or suggested support for the proposal and the others indicated that no data were available.

There were 103 other responses during the comment period, 27 being from major authorities and organizations concerned with research and conservation involving chimpanzees. Of these 27, most supported and none expressed general opposition to

reclassification of *P. paniscus* or to reclassification of wild populations of *P. troglodytes*. However, 8 recommended that some or all captive populations of *P. troglodytes* also be reclassified from threatened to endangered status. Several arguments were put forth in support of this position and specific comments with corresponding responses are as follows:

(1) *Comment:* There is no legislative history suggesting that captive populations can be treated as distinct "species" and there is no precedent for listing captive populations differently than wild populations.

Response: In the Endangered Species Act of 1973, as amended (Act), the definition of "species" is not the same as the usual biological definition of species but is expanded specifically to include "any species, subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Captive animals are distinct from wild populations and may have the potential to interbreed when mature. In the case of the chimpanzee, some animals are specifically being managed as an interbreeding population. In listing the ranched population of the Nile crocodile in Zimbabwe, the Service has previously classified specimens in captivity differently than wild populations.

(2) *Comment:* Placing captives in a category of lesser concern might actually stimulate continued commerce and thereby create conditions contrary to the intent of the Endangered Species Act.

Response: The Service believes that to the extent that self-sustaining breeding groups of captive *P. troglodytes* provide surplus animals for research and other purposes, there may be reduced probability that other individuals of that species will be removed from the wild.

(3) *Comment:* Captive breeding efforts by private institutions participating in the National Chimpanzee Management Program cannot be considered because they are not efforts by a State or political subdivision of a State.

Response: The direction to take into account efforts made by State or political subdivisions applies only to the consideration of protective management efforts when assessing listing determinations, but not the aspect on the status of the population. Nevertheless, the National Institutes of Health (NIH) is supporting and guiding the National Chimpanzee Management Program. NIH's protective efforts are covered by subsections 4(a)(1) (B), (D) and (E) of the Endangered Species Act and must be considered.

(4) *Comment:* The previous split treatment did not lead to an increase of the wild populations. Furthermore, there was "previous mismanagement [of captive populations] by NIH and grant recipients".

Response: While the wild populations declined since the original special rule was applied to the captive populations in the United States, there is no evidence that the different treatment of these populations was in any way responsible for the population decline. Furthermore, while some previous captive breeding management practices, such as hand-rearing young in an attempt to maximize production and other management strategies discussed by Seal and Flesness (1986), were misdirected, those involved in the National Chimpanzee Management Program have modified their breeding program as indicated in a letter by Flesness (*pers. comm.*).

(5) *Comment:* Captive populations in the United States are being managed inadequately, are likely to decline in the near future, and are not self-sustaining, especially because there are few second generation captive-born chimpanzees. Furthermore, the Service did not utilize important data on the deteriorating status of the captive groups. The Service should postpone separating wild and captive populations until self-sustaining captive populations are an established fact.

Response: The service believes that some major chimpanzee breeding groups in the United States are being managed with the objective of achieving self-sustainability. The Service will monitor the status of these groups, in part through the request for annual reports, and will conduct more extensive assessments if significant new data become available. The present captive population may include a higher percentage of older animals than is perhaps demographically desirable. However, a population decline in the short-term does not mean that the population could not become stabilized at a lower level or even rebound to a higher level. Captive chimpanzees have been bred to the second generation, and the major populations in the United States are being managed so that significant numbers of second generation and beyond stock are likely to be produced.

(6) *Comment:* Many captive chimpanzees in the U.S. and elsewhere are not part of any organized breeding program and may be held under deplorable conditions.

Response: The Service recognizes that many chimpanzees in the United States are not in large organized breeding programs, and that some individuals may not be properly maintained. However, even as some segments of the wild population of a threatened species may become extinct, the classification of the captive population should be based on the status of the total population. Finally, the Service recognizes that the Animal and Plant Health Inspection Service (APHIS) has responsibility for implementation of the Animal Welfare Act, and believes that concerns about the conditions under which some of these captive chimpanzees are held should be addressed by APHIS.

(7) *Comment:* Foreign populations are not self-sustaining. The decision to retain them as threatened was without any scientific information.

Response: The Service has considerable information on chimpanzee numbers, especially in Europe, including many not recorded in the International Species Inventory System, and on initial efforts towards cooperative captive breeding programs. The Service believes that some of these captive populations have the potential to become self-sustaining, but believes that further information is warranted.

(8) *Comment:* Classifying captive populations in foreign countries threatens the species "by allowing institutions in foreign countries to trade in wild-caught animals."

Response: Listing the species as threatened or endangered imposes no direct control over actions by foreign individuals or organizations outside of the United States. Restrictions on the import of animals or specimens solely for biomedical purposes are the same for threatened and endangered species.

Also among the 27 responses cited above were 6 pointing out a need for improved methods to track movement of chimpanzees, and to ensure that all animals entering the United States meet provisions of the regulations. Such means of registration include standard fingerprinting, microchip emplacement, and blood typing. Again, the Service will endeavor to determine whether such methods are necessary and feasible, and, if so, would plan appropriate modifications of the regulations.

Some commenters specifically suggested requiring DNA "fingerprinting" of all animals is foreign facilities that may wish to export chimpanzees to the United States in the future, and at least one commenter suggested that the public be notified of all applications to import chimpanzee specimens to the United States through the **Federal Register** as is now required for all endangered species, and that

trade be restricted to CITES Parties. In response, the Service notes that the proposed special rule provides that the chimpanzees removed from the wild after the effective date and their progency will still be treated as endangered for permitting purposes. Proof of specimens being born in captivity rests with the importer. Nevertheless, there is the perception that retaining captive populations of chimpanzees as threatened will abet trade, and further safeguards on imports of chimpanzees into the United States could be considered. While procedures to record DNA "fingerprints" of all foreign held specimens may now be impractical, the Service will publish in the **Federal Register** all import permit applications for chimpanzee specimens in order to obtain information about questionable acquisitions of chimpanzees in foreign countries and will consider DNA fingerprinting or transponder marking of chimpanzees in the United States.

Some commenters also suggested that classifying captive chimpanzees as threatened will allow some animals to be exported, and then exchanged for younger specimens that would not be allowed in trade and reimported as the original animals. In response, the Service notes that it presently requires the listing of any identifying marks on animals on applications when export is requested. Furthermore, many of the animals being exported and reimported are associated with circuses and may be sufficiently recognizable based on individual traits. Nevertheless, the Service will consider the merits of fingerprinting chimpanzees being exported.

Finally, 7 of the 27 response cited above expressed concern that certain captive colonies of *P. troglodytes* in Africa, now involved in research and breeding, would be adversely affected by the new regulations. Some or all of these comments evidently resulted from misunderstanding of the proposal. Most, for example, asked that the colonies in question not be classified as endangered, when, in fact, the proposal called for all captive *P. troglodytes*, in Africa and elsewhere, to be classified as threatened (though it is true that those captives within the historic range of the species will be subject to the regulations that cover endangered species). Some of the comments indicated a belief (1) that the colonies had the same exemption from the prohibitions as did captive chimpanzees in the United States, and that the proposal would eliminate this exemption, and/or (2) that application of the endangered species regulations to these captive groups would impose more restrictive provisions on the importation of specimens for biomedical research purposes than are now imposed by the threatened species regulations. These views are not correct. Captive animals outside of the United States have never been covered by the exemption. As for importation into the United States, the same kinds of permits for biomedical research purposes that were allowed previously will continue to be available. Some of the commenters thought that treating captive chimpanzees as endangered in range states applies a different standard for these states than other countries. However, the opportunity to move chimpanzees from the wild into captive situations within individual range states would seem to be sufficiently difficult to control so that the same provisions for obtaining permits should apply to both wild and captive populations in the range states.

Of the remaining 76 responses received during the comment period, all indicated general support, but 11 requested reclassification of captive *P. troglodytes*, and 17 requested improved tracking methods. Since the end of the official comment period, a number of additional responses have been received, including 9 from major authorities and organizations. One of the latter argued that reclassification would do more harm than good by removing the incentive for population studies of wild populations. In this regard, while it is possible that the incentive for funding population studies from certain sources (particular those seeking to obtain more captive animals) might be decreased, it is possible that funding from other sources (especially those seeking to develop conservation programs) would be increased. In any case, the Service is responsible for assigning classifications based upon the best available information on the status of the involved species. None of the other late-arriving responses contains substantial points that differ from those of comments received earlier.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the pygmy chimpanzee and wild populations of the chimpanzee should be reclassified as endangered. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the chimpanzee (*Pan troglodytes*) and pygmy chimpanzee (*Pan paniscus*) are as follows (information from Lee, Thornback, and Bennett 1988, and Teleki 1987, unless otherwise indicated).

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historical range of *P. troglodytes* encompassed all or parts of at least 25 countries, from Senegal to Tanzania. This distribution corresponded closely with the tropical forest belt of equatorial Africa, and indeed the chimpanzee is usally dependent on areas of unbroken forest, though there is increasing evidence that it is not uniformly distributed throughout such areas. The species also is able to survive at lower density in secondary forests, savannahs, and other habitats, if food sources, particularly fruit trees, remain available, and human disturbance is not extensive. *P. paniscus* is found only in the forests of central Zaire, between the Zaire, Lomami, and Kasai/Sankuru Rivers, but its distribution is not continuous in this area.

Habitat destruction, with consequent access and disturbance by people, is one of the major factors in the decline of the chimpanzees. Human population increase, conversion of forests to agriculture, and commercial logging have drastically reduced available chimpanzee habitat. These processes are most prevalent in the western and eastern parts of the overall range of *P. troglodytes*, and seem to be working towards the center. Most of the primary forests of such countries as Sierra Leone, Rwanda, and Burundi have already been eliminated, along with most of the resident chimpanzee populations. In his response to the proposed rule, Dr. Harold R. Bauer (Ohio State University) pointed out that aerial photography shows that in the 1940s there was an almost continuous cover of forest in the region of Tanzania around Gombe National Park, but that by the 1960s the park had become essentially a biological island. Professor R.W. Wrangham (University of Michigan) responded that his studies in Uganda have revealed that forests there are being destroyed and converted to agriculture at an accelerating rate, and that loggers are killing and eating the chimpanzees.

The IUCN already classifies one of the three subspecies of *P. troglodytes* as endangered. This subspecies, *P. t. verus*, formerly ranged from Senegal to Nigeria, and may have numbered 500,000

individuals. There are now probably fewer than 17,000, mostly in small, discontinuous populations. Much of the decline has taken place only in the last few decades. In Sierra Leone, for example, numbers crashed from about 20,000 in the 1960's to around 2,000 today. In Ghana, according to that nation's official response to the proposed rule, no more than 50 chimpanzees are left. Janis Carter, a co-director of The Chimpanzee Rehabilitation Project in Gambia, and who has 12 years of experience with chimpanzees in western Africa, stated in response to the proposal that while the largest remaining numbers of the western subspecies are found in Guinea and Liberia, populations there have been greatly reduced and fragmented through habitat destruction, hunting, and capture for trade. A change in government in Guinea in 1984 has led to intensified development, road construction, and hunter access in what had been remote regions of natural habitat. The other two subspecies of *P. troglodytes, P. t. troglodytes* in the central part of the range of the species, and *P. t. schweinfurthi* in the east, are together estimated to number between about 85,000 and 215,000 individuals. The latter figure is highly speculative and based on the probably incorrect assumption that many uninvestigated areas still contain suitable habitat and are occupied at potential carrying capacity (see discussion of Zaire, below).

Both the central and eastern subspecies of *P. troglodytes*, as well as the species *P. paniscus*, are classified as vulnerable, rather than endangered, by the IUCN. It must be noted, however, that the IUCN designations of endangered and vulnerable are not the precise equivalents of the terms endangered and threatened as defind in the Act. The latter term is often applied by the Service to entities in which deterioration is only potential or even in which such deterioration has been arrested. The term endangered refers to any species that is in danger of extinction throughout all or a significant portion of its range. With respect to the chimpanzees, in which major declines are ongoing and likely to accelerate, endangered is the more appropriate classification. Moreover, the IUCN designations were applied to the chimpanzee prior to availability of new information indicating that serious problems have developed in what was thought to be the safest part of the range of the species (see below).

The chimpanzee now has been entirely extirpated from 5 of the 25 countries in which it is known to have originally occurred. Its numbers have been reduced to fewer than 1,000 individuals in 10 other countries, to fewer than 5,000 in 6 others, and to fewer than 10,000 in 2 of the remaining 4 countries. There had been an assumption that the chimpanzee was relatively secure in the nation of Gabon, based on a survey in the early 1980's, which estimated numbers there at about 64,000. However, Dr. Caroline E. G. Tutin, who headed that survey, recently submitted a comment during the Service's status review, in which she stated that, because of habitat disruption and hunting, the chimpanzee had begun "to decline at an alarming rate" in Gabon. She thinks that numbers will fall by at least 20 percent by 1996, and she now thinks that reclassification to endangered is appropriate. In its response to the proposed rule, the Government of Gabon indicated that logging and railroad construction had opened new forest areas to hunters, thereby adversely affecting the chimpanzee population.

The status of *P. troglodytes* is most poorly known in the nation of Zaire. Numerical estimates range up to 110,000 individuals, but such figures are based on calculations of the amount of habitat thought to be suitable, and on the assumption that all such habitat is still occupied. There are indications that much of the involved area may never have supported substantial chimpanzee populations, even under natural conditions, and that the species already has been eliminated in other parts of the area, particularly through logging and hunting. A more realistic estimate for the number of *P. troglodytes* in Zaire would be around 20,000 (according to Lee, Thornback, and Bennett 1988). In other countries in the eastern part of the range of the species, populations are known to have become highly fragmented and to be declining.

Numerical estimates for *P. paniscus*, which occurs only in Zaire, also sometimes have been high, up to about 100,000–200,000. Again, however, such figures are based on the belief that distribution is continuous. Actually, according to the IUCN, the species is absent or rare in many areas of presumed suitable habitat, even under natural conditions, and is apparently not present in the central part of its range. It now remains common only in a few scattered localities, with the most reliable population estimate being about 15,000 animals. The main ongoing problem is habitat loss through increasing slash and burn cultivation, and commercial logging. Reduction and fragmentation of the already discontinuous range also has resulted from local hunting. These problems are relatively well known with respect to *P. paniscus* south of the Zaire River, and provide an idea of what may also be happening to *P. troglodytes*, found to the north. *P. paniscus* evidently is the rarer of the two species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Chimpanzees are extensively sought by people, both alive for use in research, entertainment, and exhibitions, and dead, for local use as food and in religious rituals. Such utilization is contributing substantially to the decline of each species. The United States was once the chief importer of chimpanzees (41 FR 45993; October 19, 1976), but has experienced no major legal activity of this kind for about a decade. Commercial trade has continued elsewhere, and there has been an alarming recent trend towards killing adult females both for local use as meat and in order to secure their live offspring for export. Also, because entire family groups may have to be eliminated in order to secure one live infant, and since many of these infants perish during the process, it has been estimated that five to ten chimpanzees die for every one that is delivered alive to an overseas buyer. Many thousands of wild chimpanzees have been lost in this manner during the last several decades, with a resulting extermination or great reduction of several major populations, particularly in western Africa. There remains a substantial commercial demand for chimpanzees, especially for biomedical research, and to a lesser extent for behavioral studies.

There also is an escalating demand for local utilization of the meat of chimpanzees. Opening of forest habitat and the spread of modern weapons are helping to satisfy this demand. Mining operations attract large concentrations of people and result in intensive hunting to supply meat from the surrounding forests. Such activity is of particular concern with respect to *P. troglodytes* in eastern Zaire. Comments from several authorities (Dr. Arthur D. Horn, Dr. Geza Teleki, and Drs. Nancy Thompson-Handler and Richard K. Malenky), received by the Service during its recent status review, also indicate that *P. paniscus* has declined in numbers and distribution through local taking for use as food or pets, and in religious rituals.

C. *Disease or Predation.* Chimpanzees are susceptible to many of the same diseases that afflict people (indeed this is why chimpanzees are considered important in biomedical research).

When natural chimpanzee populations are reduced and come into increasing contact with the expanding human population, the former may be exposed to infectious diseases. In a comment in response to the Services status review, Dr. Jane Goodall pointed out that illnesses of various types, including several major epidemics, have been among the factors preventing an increase in the chimpanzee population of Tanzania's Gombe National Park, even though that area is better protected than are most chimpanzee habitats of Africa.

D. *The inadequacy of existing regulatory mechanisms.* Both *P. troglodytes* and *P. paniscus* are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention), meaning essentially that export and import are prohibited by member nations, unless such activity is not detrimental to the species. In addition, domestic legislation in various non-African countries, including the United States, restricts or forbids importation of wild-caught chimpanzees. Many of the African nations with wild chimpanzee populations also have protective laws. Nonetheless, chimpanzees continue to be exported, imported, and captured and killed illegally for various uses.

Internationally, there have been problems, both because not all involved countries are parties to the Convention, and because the controls of the Convention are sometimes surreptitiously bypassed. There have been cases of chimpanzees being illegally captured in and exported from countries in Africa, and then brought into nations that are parties to the Convention. In response to inquiries by the Service during its recent status review, the governments of several African nations indicated that they have regulations protecting chimpanzees, but that enforcement is very weak because of lack of resources and expertise. The Central African Republic, for example, explained that hunting pressure by the native forest people was relatively light, but that poachers from surrounding areas, and even from outside the country, were causing increasing problems. In her response to the review, Dr. Jane Goodall stated that poaching even had become a problem in the well-protected Gombe National Park of Tanzania.

E. *Other natural or manmade factors affecting its continued existence.* Dr. Goodall's response also pointed out that the naturally slow reproductive rate of chimpanzees (very few adult females raise more than two young to maturity during their approximately 27 years of reproductive life), combined with increasing human pressures, places the chimpanzee in a precarious survival position. It is her opinion that "the continued removal of infants from wild populations (even if this does not involve the killing of breeding females) will, within a relatively short period of time, bring wild chimpanzees to the verge of extinction in Africa." In a separate response to an inquiry from the United States Embassy in Tanzania, made at a request from the Service during its recent review, Dr. Goodall added that the chimpanzee population of Gombe National Park had become isolated by surrounding human agricultural activity, and there were thus doubts about the long-term genetic viability of the population.

The problems indicated by Dr. Goodall are unfortunately becoming prevalent throughout the range of the chimpanzee. All populations are undergoing fragmentation into ever smaller and more isolated units. This process is most advanced in the western and eastern populations, but is under-way even in Zaire. It restricts natural interbreeding and increases vulnerability to decimation by various intrinsic and extrinsic factors. Small, isolated groups of chimpanzees are more easily eliminated by human hunting, disease, or any local environmental disruption. Fragmentation and associated disturbance may also have adverse long-term effects relating to social structure and reproduction.

In her response to the proposal, Dr. Margery L. Oldfield of the University of Texas supported an endangered classification for all wild chimpanzee populations. Her studies indicate that the selective removal of breeding females from a population of long-lived, slow-reproducing animals will inevitably lead to extinction. As explained above, this process is occurring relative to the chimpanzee, as adult females are being killed in order to obtain their young for trade.

The decision supporting reclassification to endangered status for the chimpanzee in the wild, and for the pygmy chimpanzee in the wild and in captivity, was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the two species. Wild populations of the chimpanzee have been reduced to a small fraction of their original size, and the species has disappeared entirely from a number of countries. Its status continues to deteriorate through habitat destruction, expansion of human activity, hunting, commercial exploitation, and other problems. Such deterioration is likely to continue or accelerate with respect to wild populations, though in the United States and certain other countries there are captive groups sufficiently large to be maintained independently; current efforts to enhance the care and breeding potential of these groups could reduce the demand for additional wild individuals. The pygmy chimpanzee, which evidently is rarer and more restricted in range than is the other species, has suffered from similar problems in the wild and is represented by only a few captive individuals. To retain a classification of threatened for the pygmy chimpanzee, and for the chimpanzee in the wild, would not adequately reflect the decline of these species and the multiplicity of long-term problems confronting them. Critical habitat is not being determined, as its designation is not applicable outside of the United States.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. The chimpanzee and pygmy chimpanzee long have been listed as threatened and are already fully covered by section 7(a), and their reclassification to endangered will add no new requirements in this regard.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general

prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service. With respect to the case at hand, these prohibitions will not apply to live members of the species *Pan troglodytes* held in captivity in the United States on the effective date of this final rule, or to the progeny of such animals, or to the progeny of animals legally imported into the United States after the effective date of this final rule.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species, including individuals and parts and products thereof, under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d) thereof. Reclassification to endangered status will preclude issuance of permits to import wild-caught individuals solely for zoological exhibition or educational purposes, as is now allowed for threatened species pursuant to 50 CFR 17.32. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Revision of Special Rules

This rule will continue the original special regulation, described above under "Background," with respect to captive individuals of the species *P. troglodytes* in the United States, but there also will be an additional provision. Since all members of that species in captivity will be classified as threatened, there may be potential for individuals to be taken from the wild and then for such individuals or their progeny to be imported into the United States pursuant to regulations covering threatened species, which are less restrictive than those covering endangered species. To assure that removal of animals from the wild is not encouraged by less restrictive regulations, which might result in a decline of wild populations, the special rules provide that the regulations covering endangered species will apply to any individual chimpanzee within the historic range of the species, regardless of whether in the wild or in captivity. This provision also will apply to any chimpanzee not within the historic range, but which originated within this range after the effective date of this rule, and also will apply to the progeny of any such chimpanzee, other than to the progeny of animals legally imported into the United States after the effective date. This last exception is made so that a chimpanzee, born to parents already legally imported into the United States under the restrictive endangered species regulations, will not have to be tracked and treated separately from the rest of the captive population.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for the determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Lee, P.C., J. Thornback, and E.L. Bennett. 1988. Threatened primates of Africa. The IUCN Red Data Book. International Union for Conservation of Nature, Gland, Switzerland, xx+155 pp.

Teleki, G. 1987. Recommendations on the need to reclassify the African "common" chimpanzee (*Pan troglodytes*) from threatened to endangered under the Endangered Species Act of 1973. Committee for Conservation and Care of Chimpanzees, Washington, DC, 49 pp.

Author

The primary authors of this rule are Dr. Charles W. Dane and Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703-358-1708 or FTS 921-1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entries for "Chimpanzee" and "Chimpanzee, pygmy" under "MAMMALS," in the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Chimpanzee	*Pan troglodytes*	Africa—see 17.40(c)(3)	Wherever found in the wild	E	16,___	NA	NA
Do	do	do	Wherever found in captivity	T	16,___	NA	17.40(c)
Chimpanzee, pygmy	*Pan paniscus*	Zaire	Entire	E	16,___	NA	NA
*	*	*	*	*	*	*	

3. Amend § 17.40 by revising paragraph (c)(1), and by adding, after the concluding paragraph of (c)(2), a new paragraph (c)(3) to read as follows:

§ 17.40 Special rule—mammals.

* * * * *

(c) *Primates.*—(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all provisions of § 17.31 shall apply to the lesser slow loris, *Nycticebus pygmaeus*; Philippine tarsier, *Tarsius syrichta*; white-footed tamarin, *Saguinus leucopus*; black howler monkey, *Alouatta pigra*; stump-tailed

macaque, *Macaca arctoides*; gelada baboon, *Theropithecus gelada*; Formosan rock macaque, *Macaca cyclopis*; Japanese macaque, *Macaca fuscata*; Toque macaque, *Macaca sinica*; long-tailed langur, *Presbytis potenziani*; purple-faced langur, *Presbytis senex*; Tonkin snub-nosed langur, *Pygathrix (Rhinopithecus) avunculus*; and, in captivity only, chimpanzee, *Pan troglodytes*.

* * * * *

(3) The provisions of §§ 17.21, 17.22, and 17.23 shall apply to any individual chimpanzee (*Pan troglodytes*) within the historic range of the species, regardless of whether in the wild or captivity, and also shall apply to any individual chimpanzee not within this range, but which has originated within this range after the effective date of these regulations, and also shall apply to the progeny of any such chimpanzee, other than to the progeny of animals legally imported into the United States after the effective date of these regulations. For the purposes of this paragraph, the historic range of the chimpanzee shall consist of the following countries: Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Nigeria, Rwanda, Senegal, Sierra Leone, Sudan, Tanzania, Togo, Uganda, and Zaire.

* * * * *

Dated: February 23, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90-5565 Filed 3-9-90; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 55, No. 48
Monday, March 12, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-54]

Public Citizen; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated November 22, 1989, which was filed with the Commission by Public Citizen. The petition was docketed by the Commission on December 19, 1989, and has been assigned Docket No. PRM-50-54. The petitioner requests that the Commission promulgate rules governing the licensing of independent power producers (IPPs) to construct or operate commercial nuclear power reactors. The petitioner also requests that these rules include specific criteria for financial qualifications for an IPP seeking a construction permit or an operating license for a commercial nuclear power reactor.

DATES: Submit comments by May 11, 1990. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m., Federal workdays.

For a copy of the petition, write the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

I. Petitioner

Public Citizen is a non-profit research and advocacy group founded in 1971 to address a broad range of consumer and environmental issues.

II. Licensing of Independent Power Producers (IPPs)

The petitioner believes that there is a growing movement towards non-utility IPPs owning, constructing and/or operating nuclear reactors. The petitioner cites as an example, the Quadrex Corporation of California, an engineering firm, that the petitioner states is considering leasing the uncompleted Bellefonte nuclear power plant from the Tennessee Valley Authority. The petitioner asserts that other engineering firms have expressed an interest in constructing and operating nuclear power plants as IPPs. Further, the petitioner states that "* * * there are no NRC regulations specifically addressing the licensing of IPPs or the transfer of licenses to IPPs. There is, therefore, a need for the NRC to expressly address the licensing of IPPs in its regulations. This includes both the application for a new construction permit or operating license as well as for the acquisition of an existing license from another license."

The petitioner states that all licensees of commercial nuclear power plants are presently regulated utilities. The petitioner believes that NRC regulations for financial qualification of licensees for the construction and operation of these facilities assume that local, state or Federal regulatory bodies will ensure that nuclear licensees have sufficient funds to safely operate their facilities.

The petitioner states that "* * * [r]egulated utilities have defined and generally fixed markets for their electricity and usually are assured a set return on the amount of investment in plants which is included in their ratebase. However, IPPs must compete openly in the wholesale marketplace and may not have a steady supply of customers. Consequently, while their rates may be set by the Federal Energy Regulatory Commission (FERC), if IPPs fail to sell all the electricity, they may not make a profit. Therefore, the long-term financial stability of an IPP is less certain than that of a regulated utility, and may go out of business more easily." The petitioner asserts that "* * * [t]his potentially precarious financial position may adversely affect the accrual of decommissioning funds, the promptness of necessary maintenance and repairs, the payment of waste fees to the U.S. Department of Energy (DOE), and the ability to pay funds in the event of an accident at any commercial nuclear plant as specified under the Price-Anderson Act.

III. Criteria for Financial Qualifications

The petitioner believes that specific financial qualifications should be made part of an IPP application for a license, the findings that the NRC must make before granting a license, and any licensing hearing or other proceeding, including a transfer of license proceeding.

The petitioner believes the IPP's should be required to:

(1) "[e]stablish a procedure to ensure that sufficient funds will be available for payment to the Nuclear Waste Fund established by the Nuclear Waste Policy Act (NWPA). The NWPA currently requires licensees of commercial nuclear power plants to charge their customers one mil (0.1 cents) per kilowatt-hour of electricity produced by those plants and to place the money into a fund managed by the Department of Energy (DOE) for the disposal of radioactive waste. Additionally, the U.S. Court of Appeals for the District of Columbia (*Consolidated Edison Co. of New York, Inc.* v. *United States Department of Energy, 870 F.2d 694, March 17, 1989*) recently ruled that the amount to be collected for the fund must account for electricity lost in transmission or

consumed on site." Some acceptable procedures suggested by the petitioner that may be developed for payment to the Nuclear Waste Fund "* * * include an insurance, surety bond, or pre-payment into the fund at the time of each refueling for the amount of electricity expected to be generated."

(2) "[e]stablish a mechanism to assure that the money which the Price-Anderson Act requires licensees to pay in the event of an accident at any commercial nuclear plant * * * would be available when needed." The petitioner asserts that this could be done by requiring either pre-payment into an external fund or by an insurance or surety bond method. The petitioner believes that "* * * [g]iven the utilities' status as regulated monopolies, state and Federal agencies can work to help ensure that utilities are able to raise the necessary funds through other regulated operations if called upon to do so. The financial status of IPPs, however, is likely to be more tenuous, and added precautions should be taken to ensure their ability to meet the requirements of the Price-Anderson Act."

(3) provide pre-payment "* * * into an external fund for the cost of decommissioning the reactor, or demonstrate the absolute assurance by a financial institution that sufficient funds will be available for decommissioning. Current licensees are allowed to demonstrate financial assurance by these two methods as well as by the establishment of an external trust into which the licensee makes annual payments during the life of the license."

The petitioner states that "* * * [t]he reason for limiting IPPs to pre-payment and insurance or surety bond methods is that there is a greater risk that any IPP may go out of business before the license is scheduled to be terminated. Accordingly, these methods best guarantee that there will be sufficient funds for decommissioning the plant."

Dated at Rockville, Maryland, this 6th day of March 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-5581 Filed 3-9-90; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB14

Organization

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes to amend part 611 to address the organization of service corporations under § 4.25 to exercise authority granted under title VIII of the Farm Credit Act of 1971, as amended (Act), to act as certified agricultural mortgage marketing facilities (title VIII service corporations). The amendment would authorize all institutions of the Farm Credit System (System) except the Federal Agricultural Mortgage Corporation (Farmer Mac) to organize title VIII service corporations and would exempt such corporations from the requirement of existing regulations that the stock of service corporations be owned only by System banks. The amendment would also permit persons (individuals and legal entities) other than System institutions to own stock in such organizations provided 80 percent of all classes of equity is held by System institutions (other than Farmer Mac).

DATES: Written comments must be received on or before March 31, 1990.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John C. Moore, Deputy Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4498, TDD (703) 883-4444

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020; TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 (1987 Act) established the Federal Agricultural Mortgage Corporation (Farmer Mac) to guarantee securities issued by agricultural mortgage marketing facilities that pool and securitize agricultural real estate and rural home loans under a new title VIII of the Farm Credit Act of 1971, as amended (Act). Section 8.5(e) of the Act authorizes Farm Credit institutions other than Farmer Mac, notwithstanding any other provision of the Act, to establish and operate as an affiliate an agricultural mortgage marketing facility (pooler) if it obtains certification from Farmer Mac. It is clear from the 1987 Act and its legislative history that System institutions are empowered to participate fully in the secondary market for agricultural real estate and rural home loans under title VIII. Consequently, § 8.5(e) of the Act is read by the FCA to amend inconsistent provisions of the Act, such as § 4.25 to the extent necessary to permit the chartering of such an entity with such powers as are necessary to conduct an effective pooling operation.

Section 4.25 of the Act authorizes the banks of the Farm Credit System to organize a corporation for the purpose of performing functions and services for or on behalf of the organizing banks that the banks may perform pursuant to the Act. Such a corporation, like the organizing banks, is designated a Federal instrumentality. Since § 8.5(e) authorizes all Farm Credit institutions other than Farmer Mac to establish a pooler affiliate, and since § 4.25 is the exclusive mechanism for chartering System affiliates, § 4.25 is considered to be amended by § 8.5(e) to the extent necessary to permit the chartering of a pooler affiliate by any institution empowered to do so by § 8.5(e), including institutions other than banks. Moreover, such a statutory amendment overrides any inconsistent FCA regulations.

Although the Act itself contains no restriction on who may own stock in a service corporation, FCA regulations governing the organization of service corporations (set forth in subpart I of part 611) restrict ownership in service corporations organized under § 4.25 to banks of the Farm Credit System. The FCA board proposes to add a new section to subpart I that would allow any Farm Credit institution(s) (other than Farmer Mac) to organize a pooler and to own stock in a System pooler. The proposed amendment would also permit minority ownership by persons other than System institutions provided that 80 percent of all classes of equity of the corporation is at all time held by Farm Credit institutions. The term "person" is defined in the proposed regulation as an individual or a legal entity organized under the laws of the United States or any State or territory thereof.

The FCA believes the ability to issue stock to non-System institutions is in keeping with the Congressional grant of authority to Farm Credit institutions to participate in the secondary market for agricultural loans as a pooler. Neither title VIII nor its legislative history suggests that the authority of Farm

Credit institutions to participate as a pooler is granted subject to legislative restrictions to which other poolers would not be subject. The legislative history of the Agricultural Credit Technical Corrections Act of 1988 confirmed that purchases of non-System loans were within the contemplation of Congress in enacting title VIII. See 134 Cong. Rec. S10819 (daily ed. Aug. 3, 1988) (statement of Senator Lugar). The FCA believes it appropriate to allow System poolers the flexibility to offer stock ownership to persons other than System institutions as an added incentive for non-System institutions to participate with it as loan originators, in order to attract sufficient loan volume for a cost-effective pooling operation. Also, the ability to issue stock to non-System institutions would facilitate joint ventures for the purpose of sharing of specialized expertise and technical capacity with non-System institutions, as well as provide an additional source of capital.

Although the FCA believes that it is important to allow System poolers the flexibility to issue stock to non-System institutions, the Board believes that it is equally important to retain control of any service corporation organized under § 4.25 in System institutions. Since any pooler organized under § 4.25 is a System institution deriving its authorities from other System institutions, the FCA Board believes that it is important, at a minimum, to ensure that non-System institutions cannot block significant corporate actions requiring a ⅔ shareholder vote in which important interests of the System are at stake. The FCA believes that the control requirement should be high enough to take into account that not all System institutions will agree on all issues and still ensure that a single non-System shareholder owning more voting stock than any single System institution could not exercise its considerable influence to the detriment of the System as a whole. Accordingly, the proposed regulation would require that at least 80 percent of the equities, voting and non-voting, of the corporation be held by Farm Credit institutions at all times.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Conflict of interest, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e); 12 U.S.C. 2011, 2021, 2071, 2096, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233.

Subpart I—Service Corporations

2. Subpart I is amended by adding a new § 611.1137 to read as follows:

§ 611.1137 Title VIII service corporations

(a) Service corporations may be organized by any Farm Credit institution(s) other than the Federal Agricultural Mortgage Corporation for the purpose of exercising the authorities granted under title VIII of the Act to act as agricultural mortgage marketing facilities. The requirements of §§ 611.1135 and 611.1136 apply as if such organizing institutions were banks, except for good cause, as determined by the Farm Credit Administration. Such service corporations may issue stock to Farm Credit institutions other than the Federal Agricultural Mortgage Corporation and to persons that are not Farm Credit System institutions, provided at least 80 percent of the voting stock is at all times held by Farm Credit institutions other than the Federal Agricultural Mortgage Corporation.

(b) For the purposes of this regulation, "person" means an individual or a legal entity organized under the laws of the United States or any State or territory thereof.

Dated: March 7, 1990.

Charles R. Row,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 90–5576 Filed 3–9–90; 8:45 am]

BILLING CODE 6705–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA proposes to raise the job opportunity objective for the 504 program from one job for each $15,000 of SBA-guaranteed debenture investment to $35,000 of such debenture investment. This action is based on a study of capital investment required for job creation. The present ratio has been in effect since 1980 and is outdated. The proposed ratio would make it easier for Certified Development Companies to find economic development projects.

DATES: Comments must be received on or before April 11, 1990.

ADDRESSES: Written comments may be sent to the Office of Economic Development, Small Business Administration, 1441 L Street NW., room 720–A, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653–6986.

SUPPLEMENTARY INFORMATION: At present the objective of job creation and retention for the certified development company (504) program is one job for each $15,000 of debenture investment guaranteed by SBA. This standard has been in effect since the inception of the program in 1980. Certified Development Companies (CDCs) have found it increasingly difficult to find projects which meet the $15,000 test, except in service and retail industries where SBA has discouraged 504 lending.

The $15,000 objective was developed in 1980, based on (unpublished) job requirements of the Economic Development Administration (Department of Commerce), and of the Urban Development Action Grant Program (Department of Housing and Urban Development), as well as recommendations of the National Development Council and the National Association of Development Organizations.

A study undertaken by Arthur Andersen & Company for the Development Company Funding Corporation, dated August 1989, shows:

(1) Prices of key components in the development process (land, construction costs, building materials, labor, professional services) have escalated considerably since the standard was established in 1980.

(2) Job creation is more costly in expansions than in business start-ups, according to data from the National Venture Capital Association. Because the 504 program is used primarily to finance business expansions, rather than start-ups, the job creation standard should take this difference into account.

(3) Job creation is more expensive in certain business sectors than in others. The highest "cost per job" figures occur in the manufacturing sector, which is one of the key sectors the Agency seeks to assist through the 504 program. In contrast, some of the lower cost per job sectors are among the industries to which the Agency has discouraged 504 lending (e.g., personal services, retail trade). It is SBA's view that the job standard should be established at a level which enables CDCs to make the

type of loans which meet the Agency's policy objectives.

The Arthur Andersen study analyzes various data sources which document the cost of job creation. The costs cited vary depending upon the type of industry and whether the data distinguish between start-ups and expansions. The Department of Commerce Bureau of Economic Analysis provides the most complete data, indicating that the cost per employee average for all industries is $133,000. This would be the equivalent of a 504 standard of 1:$53,000 (based on a debenture funding 40 percent of the project cost). This number is an average of all industry types and includes several high cost business categories which would be unlikely candidates for 504 financing (e.g., transportation, mining, communications and public utilities). On the other hand, the data do not distinguish between start-ups and expansions.

It is SBA's objective to foster the modernization of manufacturing, to increase export activity, to promote rural economic development, and to create and retain jobs above minimum pay levels. Therefore, it is SBA's judgment that a job creation and retention standard of one job for every $35,000 of debenture investment would meet the purposes of the 504 program best.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12291, SBA has determined that this rule is not a major one, since the total impact on the National economy is not likely to exceed $65 million. In this connection, we estimate that about 20 percent of the annual total number of loans (approximately 1,200) averaging $265,000 each (for SBA's project share) were rejected because they did not satisfy the ratio of one job for each $15,000 of SBA-guaranteed debenture investment. Many of these loans would now be made if the 504 program funding level is increased. If, however, the program funding level is not raised for FY 1990, and assuming the same demand for assistance exists at that level as in prior years, there would be no impact on the economy, because the use of program dollars that this rule would authorize, would be offset by a reduction in numbers of other projects.

SBA certifies that this regulatory change does not warrant the preparation of a Federal Assessment in accordance with Executive Order 12612.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 604, SBA has determined that this rule will have a significant economic impact on a substantial number of small entities.

The following analysis is provided within the context of the review required under the Regulatory Flexibility Act (5 U.S.C. 603).

The reason why this action is being considered is that the present requirement of one job for each $15,000 of SBA-guaranteed debenture investment is obsolete.

Our objective is to bring the job-to-dollar ratio into better alignment with present-day job creation and retention cost. The legal bases for this rule change are section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6) and section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

This rule change will affect those 504 loan applicants which have a job creation and retention ratio in excess of $15,000 per job. We estimate that 240 loans will be affected (20% of loans approved).

There are no projected reporting, record-keeping or other compliance requirements imposed by this rule. There are no Federal rules which duplicate, overlap or conflict with this proposed rule.

Significant alternatives to the proposed rule which would accomplish the stated objective of this rule could be a higher or a lower job per dollar ratio. However, a higher ratio would reduce the total number of jobs created by this program under present conditions, and a lower ratio would tend to concentrate projects in service and retail industries to the exclusion of industries, such as manufacturing and export activities, which create jobs above minimum levels. It is SBA's judgment that the proposed ratio meets the purposes of the 504 program best.

As stated above, there are no reporting or other compliance requirement not approved by the Office of Management and Budget which come under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out in the preamble, part 108 of title 13, Code of Federal Regulations, Ch. I, is proposed to be amended as follows:

PART 108—[AMENDED]

1. The authority citations for part 108 continues to read as follows:

Authority: 15 U.S.C. § 687(c), 695, 696, 697, 697a, 697b, 697c, Pub. L. 100-590.

§ 108.503 [Amended]

2. Section 108.503(b)(1) Introductory text and (c) are amended by removing "$15,000" and adding instead "$35,000".

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans)

Dated: October 18, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 90-5553 Filed 3-9-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-21-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, -40F, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, -40F, and KC-10A (Military) series airplanes, which would require modification of the aircraft hydraulic system. This proposal is prompted by an incident resulting in loss of all three hydraulic systems. This condition, if not corrected, could result in loss of aircraft hydraulic power and simultaneous loss of the aircraft flight control system.

DATES: Comments must be received no later than May 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-21-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-21-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

One operator of a McDonnell Douglas Model DC-10-10 series airplane was involved in an accident in which an uncontained failure of the first stage fan disk of the Number 2 engine caused catastrophic damage to all three hydraulic systems on the airplane and resulted in the loss of all hydraulic-powered flight controls. This condition, if not corrected, could result in the total loss of the aircraft hydraulic power and simultaneous loss of the aircraft flight control system.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of an electrically operated hydraulic system shutoff valve and return line check valves in the Number 3 hydraulic system, in a manner approved by the FAA. The shutoff valve would be required to be automatically activated by a hydraulic fluid level sensor in the Number 3 hydraulic system reservoir which would activate in the event of loss of hydraulic fluid. The valve would be activated at a point where sufficient fluid remained in the system to permit operation of flight controls in the event of leaks in the system. If such a leak were to occur, the airplane would continue to respond to pitch control inputs through the horizontal stabilizer trim changes, and to roll control inputs through the lateral controls powered by the Number 3 hydraulic system. Additionally, such shutoff valve activation would be required to be annunciated in the cockpit to advise the crew of the condition.

McDonnell Douglas has indicated that it is developing service information describing procedures for installing the shutoff valve in the Number 3 hydraulic system and cockpit annunciation system, as described above. When this service information is finalized and approved, the FAA may consider referencing it in the final rule as an appropriate service information source.

The FAA has reviewed and approved McDonnell Douglas DC-10 Service Bulletin 29-129, dated February 14, 1990, which describes an "interim" modification comprised of the installation of flow rate sensing hydraulic fuses and return line check valves in the Number 3 hydraulic system lines located on the aft side of the horizontal stabilizer center box section. This modification will retain hydraulic fluid in critical branches of the Number 3 hydraulic system upstream of the fuses in the event of a massive hydraulic leak occurring downstream from the fuses. Airplane control would be maintained in the same manner as with the more complex modification described above. This is considered to be an interim corrective action because, although the hydraulic flow rate fuses will activate if a high volume or massive hydraulic system leak occurs, they will not activate for slow hydraulic system leaks. The FAA has determined that this installation is adequate to maintain the partial integrity of the Number 3 hydraulic system, without compromising safety, until the "final" modification (the electrically operated hydraulic system shutoff valve and return line check valves in the Number 3 hydraulic system) is installed.

The proposed rule would require that Model DC-10-10 series airplanes be modified within six months after the effective date of the final rule with either the "final" modification or the "interim" modification. If an operator of a Model DC-10-10 airplane elects to install the "interim" modification initially, installation of the "final" modification would be required within a year after the effective date of the final rule. Retention of the interim modification on the airplane after accomplishment of the final modification is optional.

All other Model DC-10 series airplanes, except the Model DC-10-10, would be required to install the "final" modification within one year after the effective date of the final rule. Since the recent in-service accident involved a Model DC-10-10 series airplane equipped with CF6-6 engines, and since no similar accidents have occurred involving other Model DC-10 series airplanes, the proposed requirements of the rule would permit a longer compliance time for the other Model DC-10 series airplanes.

There are approximately 428 McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, -40F, and KC-10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 243 airplanes of U.S. registry would be affected by this AD, that it would take approximately 71 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts to accomplish this modification is estimated to be $29,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,737,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DC-10-10, -10F, -15, -30, -30F, -40, -40F, and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent total loss of aircraft hydraulic power and flight control systems, accomplish the following:

A. For Model DC-10-10 and -10F series airplanes:

1. Within 6 months after the effective date of this AD, accomplish either subparagraph a. or b., below:

a. Modify the Number 3 hydraulic system by installing flow rate sensing hydraulic fuses and check valves in accordance with paragraph 2, Accomplishment Instructions, of McDonnell Douglas DC-10 Service Bulletin 29-129, dated February 14, 1990; or

b. Install an electrically operated hydraulic system shutoff valve and return line check valve in the Number 3 hydraulic system. The shutoff valve must be activated by a hydraulic fluid level sensor in the Number 3 hydraulic system reservoir and annunciated in the cockpit. The installation must be made in a manner which is approved by the Manager, Los Angeles Aircraft Certification Office.

2. For those airplanes modified in accordance with paragraph A.1.a., above, within 1 year after the effective date of this AD, install an electrically operated hydraulic system shutoff valve and return line check valve in the Number 3 hydraulic system. The shutoff valve must be activated by a hydraulic fluid level sensor in the Number 3 hydraulic system reservoir and annunciated in the cockpit. The installation must be made in a manner which is approved by the Manager, Los Angeles Aircraft Certification Office. The modification of paragraph of A.1.a. may be removed after accomplishment of this paragraph.

B. For Model DC-10-15, -30, -30F, -40, -40F, and KC-10A (military) series airplanes, within one year after the effective date of this AD, install an electrically operated hydraulic system shutoff valve and return line check valve in the Number 3 hydraulic system. The shutoff valve must be activated by a hydraulic fluid level sensor in the Number 3 hydraulic system reservoir and annunciated in the cockpit. The installation must be made in a manner which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Change, Mail 73-30. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on March 2, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5538 Filed 3-9-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR 307

Proposed Smokeless Tobacco Regulations

AGENCY: Federal Trade Commission.

ACTION: Reopening of comment period.

SUMMARY: The Federal Trade Commission is reopening the public comment period for 30 days, until April 11, 1990, in order to solicit comments on specific questions that have arisen from the comments received on the Notice of Proposed Rulemaking for possible amendments to its regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act"). The comment period on the notice, published on July 31, 1989 (54 FR 31541), was extended to October 16, 1989 (54 FR 37117).

DATES: Comments regarding the proposed amendments to the regulations must be filed no later than April 11, 1990.

ADDRESSES: Comments should be addressed to Secretary, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Anne V. Maher (202) 326-2987. Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

In a Notice of Proposed Rulemaking published on July 31, 1989 (54 FR 31541), the Federal Trade Commission requested public comment on proposed amendments to 16 CFR Part 307, the Commission's regulations under the Comprehensive Smokeless Tobacco Act of 1986. Those regulations, which took effect on February 27, 1987, implement the Act's requirements for the display of health warnings in the labeling and advertising of smokeless tobacco products and for the submission of plans for compliance with the Act. The notice proposed the deletion of the exemption of utilitarian objects from the regulations, and proposed a method for displaying the required health warnings on utilitarian objects. The date on which comments would have been due was August 30, 1989, but after several organizations requested an extension of time, the Commission extended the comment period for an additional 45 days, until October 16, 1989, (54 FR 37117).

The Commission has received 88 comments on the proposed amendments from a variety of individuals and organizations. The Commission staff has analyzed the comments and is now in the process of drafting a proposed final rule. However, several questions have arisen from the proposed comments which the Comission believes should be addressed on the public record before publication of the final regulations. Specifically, the Commission is soliciting information on: (1) Possible methods for placing the mandated health warnings on hats and caps; (2) the type, number, and market share of certain utilitarian items which are utilized to display smokeless tobacco logos, brandnames and selling messages; and (3) the number of small entities affected by the proposed regulations. While the Commission is not requesting or encouraging comments on other topics, it will consider any views which are offered as rebuttal to

comments filed in response to the notice of proposed rulemaking.

Section B—Questions

In light of the comments received in response to its proposed amendments to its regulations under the Smokeless Tobacco Act of 1986, the Commission is seeking comments on the following questions:

Question 1. The Commission has received numerous comments regarding the technological problems in affixing warning labels on hats and caps in the manner prescribed in the proposed amendments. Section 307.9(b) of the proposed amendments requires that the warning must be printed, embossed, embroidered or otherwise affixed to the utilitarian object with the same permanence and durability as the product brandname, logo or selling message. Proposed § 307.9(a) requires the warning to be visible whenever the brandname, logo or selling message is visible. Moreover, by example, the advertising display area for a baseball cap is defined as the conical area of the cap, excluding the brim.

Comments received indicate that many hats and caps, however, are embroidered with the smokeless tobacco logo, brandnames or selling messages on the front panel. Some commentors have asserted that it is technologically impossible to embroider a legible warning in the small size necessary to fit on a panel. The Commission, therefore, is requesting the following information:

A. Is there a method by which the warning statement can be affixed to a hat or cap which will be visible when the brandname, logo or selling message is visible, which will be comparable in visibility to the brandname, logo or selling message, and which will be of sufficient durability to last for the useful life of the hat or cap?

Question 2. The Commission has received many comments dealing with the placement of health warnings on particular types of utilitarian items. For example, some commentors have asked for exemptions or alternative warning schemes for items which are too small to accommodate conspicuous and legible warnings. Other commentors have indicated that the warning requirement as proposed would be technologically infeasible for certain items. The Commission is seeking additional information concerning the distribution of utilitarian objects, and particularly which are most utilized for displaying the brandnames, logos and selling messages of smokeless tobacco companies. Without this information, the Commission must assume that all utilitarian items constitute an important part of smokeless tobacco advertising and, therefore, warrant placement of the warning on the object. The Commission, therefore, is requesting the following information:

A. What are the top fifteen utilitarian items—in terms of number of items—that are sold or given away each year—bearing the brandname, logo or selling message of a smokeless tobacco company?

(i) Approximately what percentage of the smokeless tobacco utilitarian item market is each of the fifteen items?

(ii) Approximately how many of each of the fifteen items were disseminated in 1988? This information can be listed by smokeless tobacco company, and can be given in terms of numbers manufactured, ordered or distributed.

B. In its comments, the Smokeless Tobacco Council included as Exhibits 1 through 28 examples of utilitarian items which it contends are too small to accommodate a clear and conspicuous warning. Please provide data showing the approximate number of each of these types of items (e.g., belt buckles, patches, golf ball packs, key rings and chains, etc.) that were disseminated in 1988. This information can be listed by smokeless tobacco company and, if applicable, can be given in terms of numbers manufactured, ordered or distributed.

Question 3. The Commission has received many comments which maintain that the proposed amendments will have an adverse effect on the small businesses involved in the manufacture and distribution of utilitarian objects which bear smokeless tobacco brandnames, logos or selling messages. While these comments appear to address the compliance obligations that have been imposed by the Smokeless Tobacco Act, rather than by the proposed amended rule, the Commission is nonetheless interested in receiving more information about the impact of the rule on small businesses. For purposes of this question, we are interested only in businesses that employ fewer than 100 people.

A. Approximately how many firms will be affected by the proposed amendments to the smokeless tobacco regulations?

B. What is the approximate percentage of smokeless tobacco business that each of these firms handles?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-5562 Filed 3-9-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Revised Program Amendment Number 39 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Proposed Revised Program Amendment Number 39 reiterates several revisions to eight administrative rules proposed earlier in Program Amendment Number 39. In addition, proposed Revised Program Amendment Number 39 proposes new revisions to three of these rules and provides administrative record information concerning the consideration of the seriousness of violations in the determination of amounts of individual civil penalties. The additional changes proposed in Revised Program Amendment Number 39 would revise the definition of "property to be mined," would correct a reference to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and would revise a new proposed rule authorizing individual civil penalties. All of the proposed revisions are intended to make the Ohio rules consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on April 11, 1990. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on April 6, 1990. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on March 27, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field

Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 3, 1988 (Administrative Record No. OH-1113), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) of a number of Federal regulations promulgated between October 1, 1983 and June 15, 1988 for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts.

Also, on December 22, 1988, the Director of OSM announced the approval, with certain exceptions, of Ohio Program Amendment No. 34 (53 FR 51543). In this announcement, the Director disapproved the definition of "property to be mined" at OAC 1501:13-1-02 (MMMM) as submitted by Ohio on May 24, 1988. The Director required that Ohio submit a proposed amendment to revise the definition of "property to be mined" so as to require that permit applications identify all owners of record of mineral estates to be removed or displaced by surface excavation activities during the proposed coal mining operations.

In response to the OSM requirements of November 3 and December 22, 1988, Ohio submitted proposed Program Amendment No. 39 by letter dated March 1, 1989 (Administrative Record No. OH-1168). Ohio submitted further administrative record information in support of proposed Program Amendment No. 39 on March 20, 1989 (Administrative Record No. OH-1174). OSM announced receipt of the proposed amendment in the March 20, 1989 **Federal Register** (54 FR 11388) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

By letter dated January 19, 1990 (Administrative Record No. OH-1264), OSM forwarded five questions to Ohio about proposed Program Amendment Number 39. In response to these OSM questions, Ohio submitted proposed Revised Program Amendment Number 39 by letter dated February 22, 1990 (Administrative Record No. OH-1284). The revised program amendment reiterates the revisions previously proposed in Program Amendment Number 39 to the Ohio program at Ohio Administrative Code (OAC) Sections 1501:13-1-02, 13-1-03, 13-4-14, 13-5-01, 13-7-04, 13-7-05, 13-9-11, and 13-14-06. These earlier proposed revisions are discussed in the March 20, 1989 **Federal Register** (54 FR 11388).

In addition, Revised Program Amendment Number 39 proposes further revisions to three rules and provides additional administrative record information:

(1) OAC Section 1501:13-1-02 paragraph (MMMM): This paragraph is being rewritten to state that "Property to be mined" means the surface and mineral estates within the permit area. For those areas covered by underground workings, "property to be mined" means the mineral estates to be mined and the surface estates."

(2) OAC Section 1510:13-5-01 paragraph (E)(14): This paragraph is being rewritten to correct the citation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

(3) OAC Section 1501:13-14-06 paragraph (E)(1): This paragraph is being rewritten to include imminent harm cessation orders as grounds for the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) to authorize the assessment of individual civil penalties.

(4) OAC Section 1501:13-14-06 paragraph (H): This paragraph is being rewritten to add that an individual named in a notice of proposed individual civil penalty assessment may postpone the payment of the penalty when the Chief and the permittee have agreed to a written plan for the abatement of an outstanding cessation order.

(5) Administrative Record Information in Support of Program Amendment Number 39: Ohio has provided additional information discussing the Chief's consideration of the seriousness of violations in determining the amounts of penalties. The Chief will judge the seriousness of violations in terms of the degree of environmental harm and the extent of damage.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. on March 27, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 1, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-5564 Filed 3-9-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09 90-02]

Drawbridge Operation Regulations; Black Rock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Buffalo, New York, Department of Public Works, the Coast Guard is considering a change to the operating regulations governing the Ferry Street highway bridge, mile 2.6, across the Black Rock Canal in Buffalo, New York. This change would relieve the owners of the bridge of the requirement to keep bridgetenders in constant attendance during certain periods of time. During these periods of time the draw would still be required to open on signal for the passage of a vessel if the owner has been notified in advance of the vessel's intended time of passage through the draw. This change is being considered because of a steady decrease in requests for openings of the bridge during the winter months and certain periods of time during the navigation season. This action should relieve the bridge owner of the burden of having a person constantly in attendance at the bridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before April 26, 1990.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. Any comments received as a result of this proposed rule and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, room 2083D, Cleveland, Ohio. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names, addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Ninth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Fred H. Mieser, project officer, and Lieutenant Commander M. Eric Reeves, U.S. Coast Guard project attorney.

Discussion of Proposed Regulations

Presently, the Ferry Street highway bridge has a bridgetender in constant attendance to open the bridge on signal for the passage of vessels. However, the Commander, Ninth Coast Guard District, has authorized the removal of bridgetenders during the winter navigation season, December through April, on an annual basis in accordance with the provisions of 33 CFR 117.45.

The proposed operating regulations would allow the owner of the Ferry Street bridge to remove all bridgetenders from December 1 through April 14 (in accordance with current regulations). From April 15 through November 30, between the hours of 7 a.m. and 11 p.m., seven days a week, bridgetenders will be required to be in attendance at the bridge to open for the passage of vessels; from 11 p.m. to 7 a.m., seven days a week, which would be "advance notice periods," no bridgetender would be required to be in attendance at the bridge. During the advance notice periods, the draw would be required to open on signal if notice is given to the owner at least four hours in advance of a vessel's intended passage through the draw. Public vessels of the United States, State and local government vessels used for public safety and vessels in distress would be passed through the draw as soon as possible even though there are advance notice periods in effect. These changes are being considered because of a decrease in requests for openings. During the 1987 and 1988 navigation seasons, there was a total of only 66 openings between the hours of 11 p.m. and 7 a.m. During the winter months, bridgetenders are not required because, due to weather conditions, the locks are closed.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Removal of bridgetenders from the Ferry Street bridge during the winter months has been authorized annually by the Commander, Ninth Coast Guard District, and has not caused any navigational impacts due to the lack of navigation during this period of time. During the navigation season, removing bridgetenders between the hours of 11 p.m. and 7 a.m. should not cause any significant impacts on vessels transiting the Black Rock Canal because of the small amount of vessel traffic at night, and because any vessel navigating the canal during this period of time would be able to transit through the draw by notifying the owner four hours in advance of its intended time of passage through the draw. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant preparation of a Federalism Statement.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.769 is added under the listing of bridges for the State of New York, to read as follows:

§ 117.769. Ferry Street, Black Rock Canal, New York.

(a) The draw of the Ferry Street bridge, mile 2.6, at Buffalo, shall operate as follows:

(1) From April 15 through November 30, the draw shall open on signal. However, between the hours of 11 p.m. and 7 a.m., seven days a week and holidays, no bridgetender is required to be in attendance at the bridge and the draw shall open on signal if notice is given to the owner at least four hours in advance of a vessel's intended passage through the draw.

(2) From December 1 through April 14, no bridgetender is required to be in attendance at the bridge and the draw shall open on signal if notice is given to the owner at least four hours in advance of a vessel's intended passage through the draw.

(b) At all times, public vessels of the United States, State or local government vessels used for public safety and vessels in distress, shall be passed through the draw of this bridge as soon as possible.

Dated: February 27, 1990.

D.H. Ramsden,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 90–5530 Filed 3–9–90; 8:45 am]

BILLING CODE 491–014–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM666PA; FRL–3732–8]

Advance Notice of Finding of Nonimplementation of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of nonimplementation finding.

SUMMARY: EPA today is providing advanced notice of its intent to make a finding that Pennsylvania is not implementing its ozone State Implementation Plan (SIP), due to Pennsylvania's failure to adopt additional volatile organic compound (VOC) control measures to eliminate the identified emission reduction shortfall in the approved control strategy, and is soliciting comments on the intended action. Pursuant to section 173(4) of the Clean Air Act, a nonimplementation finding would result in the imposition of a ban on the issuance of permits for the construction of new or modified major sources of ozone precursors in the Southeast Pennsylvania area, which includes Philadelphia, Delaware, Montgomery, Chester and Bucks Counties. Section 176(b) of the Clean Air Act may also require the withholding of federal grant funds to the state air program. By this notice, EPA seeks comments on this anticipated course of action and related alternatives.

DATES: Comments must be received on or before April 11, 1990.

ADDRESSES: All written comments should be sent to: U.S. Environmental Protection Agency, Region III (3AM13), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: David L. Arnold.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Taggart, Air Programs Branch at (215) 597–9189 on technical issues; Stephen Field, Office of Regional Counsel on legal issues at (215) 597–6178.

SUPPLEMENTARY INFORMATION:

A. Background

In response to the requirements of the 1977 Clean Air Act (CAA) Amendments, the Pennsylvania Department of Environmental Resources (PADER) submitted a SIP revision for the entire state in 1979. In the revision, PADER requested an extension of the ozone attainment date for the Southeast Pennsylvania area from December 31, 1982 to December 31, 1987. This area includes Philadelphia, Delaware, Montgomery, Chester and Bucks Counties.

EPA approved the extension on May 20, 1980. As a recipient of such an extension, the State was then required to submit a SIP revision by July 1, 1982 which demonstrated that the ozone standard would be attained by December 31, 1987.

PADER submitted the required SIP revision to EPA addressing the Southeast Pennsylvania ozone nonattainment situation on June 30, 1982. EPA proposed to disapprove parts of this revision on February 3, 1983 (48 FR 5096), including the demonstration of attainment.

The demonstration of attainment for Southeast Pennsylvania was based on the Empirical Kinetic Modeling Approach (EKMA), and an emission inventory. The modeling showed that a 44% reduction in VOC emissions from 1980 emission inventory levels was needed to attain the ozone standard. The state submittal projected a reduction of 38.5% from 1980 levels after the application of the enforceable control measures contained in the SIP. This left a 5.5% emission reduction shortfall (27,438 kg/D) with respect to the 44% reduction modeling showed was needed to attain the standard.

On October 24, 1983, PADER submitted a supplement to the June 30, 1982 SIP revision to EPA. This supplement, known as Supplement #1, specifically addressed the deficiencies in the previous submittal, and committed PADER to "adopt and implement sufficient additional emission reductions by December 31, 1987" to eliminate the deficiencies. Supplement #1 listed a number of specific regulatory and accounting measures, and stated that "a combination of these measures will be used to make up the shortfall." Included among these measures are Stage II vapor recovery, barge and tanker loading and ballasting, architectural coating regulations, and anti-tampering. Supplement #1 further stated that the necessary control measures would be adopted by March 15, 1985. The submittal allowed the State the flexibility to determine which of the listed measures would be implemented, so long as the 5.5% emission reduction shortfall was eliminated. EPA approved Supplement #1 on February 26, 1985 (50 FR 7772).

On September 23, 1985, PADER submitted a second ozone SIP supplement to EPA. This revision, known as Supplement #2, attempted to show that a 44% VOC emission reduction would occur by December 1987 for the Southeast Pennsylvania area without the implementation of any additional control measures called for in Supplement #1.

EPA proposed disapproval of Supplement #2 on September 8, 1987 (52 FR 33840), on the grounds that the emission reductions identified by the supplement were not sufficiently documented, nor were they enforceable as required by the CAA. EPA published the final disapproval of Supplement #2 on April 5, 1989 (54 FR 13682). PADER filed a petition for reconsideration of the disapproval of Supplement #2. This

petition is currently pending before EPA. Supplement #1 remains part of the Pennsylvania SIP, and requires Pennsylvania to employ such of the listed measures necessary to eliminate the 5.5% shortfall.

B. Pennsylvania's Implementation of Its Ozone SIP

PADER has implemented the VOC control measures called for in the 1982 SIP revision, for a total modeled emission reduction of 38.5%. PADER has adopted some of the measures listed in Supplement #1, and could take credit for an additional modeled emission reduction of approximately 1.5%. An emission reduction shortfall of 4.0% therefore remains. Since PADER has not implemented all the control measures needed to eliminate the shortfall, EPA is considering a finding of nonimplementation of the Southeast Pennsylvania ozone SIP.

C. Consequences of EPA Making a Finding of Nonimplementation

A formal finding that Pennsylvania is not carrying out its SIP would automatically result in the imposition of a moratorium on the permitting of major new or modified sources of ozone precursors, specifically volatile organic compounds (VOCs). Section 173(4) of the Clean Air Act provides that a major source may be built or modified in a nonattainment area only after issuance of a preconstruction permit by the state, and that such a permit shall be issued only if the SIP is being fully carried out. (*See* also 40 CFR § 52.24(b), the November 2, 1983 Sanctions Policy (48 FR 50686), and section 113(a)(5) of the Clean Air Act.)

EPA also has the authority, pursuant to the Clean Air Act (CAA) section 176(b) and section 316(b), to withhold CAA grants and sewage treatment grants, respectively. Although the language in section 176(b) appears to require air grant restrictions when a state's SIP is not being implemented, EPA expressed its belief that such a finding is discretionary in the November 24, 1987 proposed Post-87 ozone policy (52 FR 45052).

A permitting moratorium pursuant to Clean Air Act section 173(4) and any other imposed sanction would remain in effect until EPA made a finding that Pennsylvania is carrying out its SIP for Southeast Pennsylvania. EPA believes it could be appropriate to terminate the nonimplementation finding and lift all sanctions when the state initiates a good faith effort to carry out relevant provisions of the SIP

D. Solicitation of Comments

EPA is soliciting comments on several issues before making a finding that Pennsylvania is not implementing the Southeast Pennsylvania Ozone SIP. They are described below:

1. Should EPA employ additional rulemaking procedures to implement the nonimplementation finding?

In the past, EPA has treated nonimplementation findings as if each such finding were an informal rulemaking, subject to notice and comment procedures under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (*See* 48 FR 50686, 50687, November 2, 1983.) EPA believes that there are certain advantages attached to the use of the rulemaking procedure. The announcement of a proposed finding and the associated opportunity for comment insure a full opportunity for public input into the decision-making process, and agency consideration of all the relevant facts and information and the points of view of all interested parties. However, arguably this advance notice serves the same function as an announcement of a proposed finding of nonimplementation. EPA therefore seeks comments on its further use of rulemaking procedures to make the finding of nonimplementation discussed in this notice, and on whether use of an alternative or abridged proceeding might be appropriate following this notice and the comment on it. Specifically, EPA seeks comments on whether EPA should, in light of the comments received and EPA's response to those comments, proceed directly to issue a notice making the formal finding of nonimplementation, and dispense with a further proposal and further notice and comment period in light of this advance notice.

2. Should EPA also make a finding under section 176 of the CAA?

EPA in this notice is stating its intent to make a finding of nonimplementation with respect to the ozone portion of the SIP for Southeast Pennsylvania. It might also be argued that Pennsylvania has failed to submit an implementation plan or to make reasonable progress in submitting an implementation plan that considers each of the elements of section 7502, as required by section 176(a)(3) of the CAA. Making such a finding under section 176 would result in the withholding of Federal funds for highway construction.

EPA has consistently asserted that 176(a) sanctions are not available after a part D ozone SIP has been fully approved (*see* 48 FR 50686 and 52 FR 45044). EPA fully approved the Southeast Pennsylvania part D ozone SIP on February 26, 1985 (50 FR 7772), and therefore believes such sanctions are not available in this case. Further, EPA believes that a finding of nonimplementation is more directly responsive to the failure of Pennsylvania to implement Supplement #1. However, EPA is seeking public comments on the possible application of a section 176 finding and the associated highway funding sanctions.

3. Should EPA withhold CAA grant funds?

As discussed above, EPA has stated in its proposed post-87 ozone policy (52 FR 45044) that the withholding of air grant funds is discretionary. In general, that policy stated that EPA would not withhold air grant funds where the Agency believes that such withholding is counterproductive to the process of moving an area toward attainment. There are strong arguments that the better legal view is that such withholding is nondiscretionary once a finding of nonimplementation is made. EPA seeks comments as to whether the withholding of air grant funds is discretionary, and if so, whether such withholding would be counterproductive, or would serve to advance the prospect of Pennsylvania moving towards full implementation of its SIP.

4. Should EPA withhold sewage treatment grants?

Sewage treatment grants may be withheld or conditioned subsequent to a finding of nonimplementation, in accordance with section 316 of the CAA. EPA seeks comments on the implications of withholding those grants.

Interested parties are invited to comment on these issues, and all other aspects of this advance notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: February 26, 1990.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 90–5590 Filed 3–9–90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-90, RM-7126]

Radio Broadcasting Services; Sulphur, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KSIG Broadcasting Co., Inc., licensee of Station KTQQ(FM), Channel 265A, Sulphur, Louisiana, proposing the substitution of Channel 265C3 for Channel 265A at Sulphur, and the modification of its license for Station KTQQ(FM) to specify the higher powered channel. The proposed site for Channel 265C3 is 14.5 kilometers (9 miles) east of the city at coordinates 30-11-08 and 93-14-14.

DATES: Comments must be filed on or before April 27, 1990, and reply comments on or before May 14, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lou Basso, Jr., President, KSIG Broadcasting Co., Inc., Box 2418, Sulphur, LA 70664-2418 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-90, adopted February 21, 1990, and released March 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5489 Filed 3-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-88, RM-6981]

Radio Broadcasting Services; West Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Phoenix Broadcasting Company, proposing the substitution of Channel 252C1 for Channel 252C2 at West Monroe, Louisiana, and modification of its license for Station KYEA(FM) at West Monroe to specify operation on the higher class co-channel. A site restriction of 46.5 kilometers (28.9 miles) southeast of the city is required. The coordinates are 32-11-49 and 91-49-58.

DATES: Comments must be filed on or before April 27, 1990, and reply comments on or before May 14, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bradford D. Carey, Esq., Ashton R. Hardy, Esq., Walker, Bordelon, Hamlin, Theriot & Hardy, 701 S. Peters St., New Orleans, LA 70130 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-88, adopted February 21, 1990 and released March 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service; (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5486 Filed 3-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-85, RM-7147]

Radio Broadcasting Services; Greenville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by First Greenville Corporation, proposing the substitution of Channel 228C2 for Channel 228A at Greenville, Texas, and the modification of its license for Station KIKT(FM) at Greenville to specify the higher class channel. The allotment can be made in compliance with the minimum distance separtion requirements of the Commission's Rules at a site 24.8 kilometers (15.4 miles) northeast of the city, at coordinates 33-17-19 and 95-54-57.

DATES: Comments must be filed on or before April 27, 1990, and replay comments on or before May 14, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: J. Dominic Monahan, Esq., Dow, Lohnes & Albertson, 1255 Twenty-third Street, NW., Suite 500, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-85, adopted February 21, 1990, and released March 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The compilete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohobited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcating.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5484 Filed 3-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-89, RM-7129]

Radio Broadcasting Services; McCleary, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Susan M. Ciborosky proposing the allotment of Channel 245C3 to McCleary, Washington, as that community's first local FM service. A site restriction of 1.6 kilometers (1 mile) south of the city is required at coordinates 47-02-20 and 123-16-28. In addition, concurrences by the Canadian government is required for the proposal.

DATES: Comments must be filed on or before April 27, 1990, and reply comments on or before May 14, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Susan M. Ciborosky, 1608 Highland Avenue, Hubertus, WI 53033 (Petitioner); and Larry G. Fuss, Contemporary Communications, P.O. Box 159, Fayetteville, GA 30214 (Consultant to petitioer).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530..

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-89, adopted February 21, 1990, and released March 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transacription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5485 Filed 3-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-87, RM-7073]

Radio Broadcasting Services; Marathon and Stevens Point, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Eagle of Wisconsin, Inc., licensee of Station WMGU(FM), Channel 285A, Stevens Point, Wisconsin, proposing the substitution of Channel 285C3 for Channel 285A at Stevens Point, the change of community of license for Channel 285C3 from Stevens Point to Marathon, Wisconsin, and the modification of Station WMGU(FM)'s license to specify Channel 285C3 at Marathon. The proposal requires the relocation of the station's present transmitter site 12.9 kilometers (8 miles) southeast of the city at coordinates 44-49-40 and 89-45-33.

DATES: Comments must be filed on or before April, 1990, and reply comments on or before May 14, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John E. Fiorini, III, Esq., Mark Van Bergh, Esq., Heron, Burchette, Ruckert & Rothwell, Suite 700, 1025 Thomas Jeferson Street, NW., Post Office Box 96670, Washington, DC 20009 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-87, adopted February 22, 1990, and released March 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The compete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5488 Filed 3-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-86, RM-7155]

Radio Broadcasting Services; Portage, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WIBU, Inc., proposing the allotment of Channel 240A to Portage, Wisconsin, as that community's second local FM service. The allotment of Channel 240A at Portage requires a site restriction of 10.5 kilometers (6.5 miles) southwest of the city. The coordinates are 43-29-50 and 89-34-27.

DATES: Comments must be filed on or before April 27, 1990, and reply comments on or before May 14, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David H. Bornstein, Vice-President and Secretary, WIBU, Inc., WIBU Road, Poynette, WI 53955 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-86, adopted February 22, 1990, and released March 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5487 Filed 3-9-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Endangered Status for White-necked Crow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Service gives notice that the comment period on the proposed rule to determine endangered status for the white-necked crow will be extended by 7 weeks.

DATES: Comments must be received by April 16, 1990. Public hearing requests must be received by March 29, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, Room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703-358-1708 or FTS 358-1708).

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of December 27, 1989 (54 FR 53132-53134), the Fish and Wildlife Service issued a proposed rule to determine endangered status for the white-necked crow (*Corvus leucognaphalus*), a bird found in the Dominican Republic and Haiti, and formerly in Puerto Rico and the Virgin Islands. The comment period on the proposal originally closed on February 26, 1990. This deadline did not allow sufficient time for the Service to solicit and receive comments from the involved foreign governments and certain other interested parties, by means of letters, cables, and a newspaper notice. The Service therefore is extending the comment period, and also the deadline for requesting a public hearing, until the dates shown above.

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

Dated: February 27, 1990.

John D. Buffington,

Regional Director—Region 8.

[FR Doc. 90-5490 Filed 3-9-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 48
Monday, March 12, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee will discuss proposed recommendations and a draft report by David Anderson and Diane Stockton on federal agency use of ombudsmen.

Date: Tuesday, March 20, 1990, 2 p.m.

Location: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

For Further Information Contact: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500 (202) 254-7020.

Dated: March 7, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90-5606 Filed 3-9-90; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Human Nutrition Board of Scientific Counselors; Intent to Reestablish an Advisory Board

Notice is hereby given that the Secretary of Agriculture intends to reestablish the Human Nutrition Board of Scientific Counselors. The purpose of the Board will be to provide the Secretary of Agriculture with an independent assessment of, and recommendations on, program and policy matters relating to human nutrition research and education by qualified individuals. The Human Nutrition Board of Scientific Counselors was initially established by the Secretary of Agriculture on April 9, 1981, in conformance with provisions of the Conference Report No. 95-1579, which accompanied Public Law No. 95-448, dated September 18, 1978, on the FY 1979 Appropriations Act for the Department of Agriculture.

The Board will meet annually in Washington, DC, to receive reports from Department of Agriculture staff on research progress, educational activities, and long-range goals. The Board's findings will be reported in writing to the Secretary of Agriculture.

It has been determined that the reestablishment of this Board would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to Dr. Gerald F. Combs, National Program Staff, Agricultural Research Service, USDA, Room 132, building 005, BARC-West, Beltsville, Maryland 20705, within fifteen (15) days of publication.

Done at Washington, DC, this 6th day of March 1990.

Larry Wilson,

Assistant Secretary for Administration.

[FR Doc. 90-5521 Filed 3-9-90; 8:45 am]

BILLING CODE 3410-03-M

Animal and Plant Health Inspection Service

[Docket 90-024]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in Hillsborough County, Florida, of tomato plants genetically engineered to express an anti-sence polygalacturonase (PG) RNA. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Cathy Joyce, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental

assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-320-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test tomato plants genetically engineered to express an anti-sense polygalacturonase (PG) RNA. The field trial will take place in Hillsborough County, Flordia.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A polygalacturonase gene from tomato has been modified to produce anti-sense RNA. The modified gene was inserted in the plant genome, resulting in the inhibition of expression of the endogenous polygalacturonase gene. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is sufficiently distant from any sexually compatible plants with which it might cross-pollinate.

2. Neither the modified polygalacturonase gene itself, nor the derived anti-sense RNA, confers on tomato any plant pest characteristic. The tomato cultivar (UC82B) from which the polygalacturonase gene was obtained is not a plant pest.

3. The anti-sense polygalacturonase gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in the ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on tomato any plant pest characteristics.

5. The vector used to transfer the anti-sense polygalacturonase gene to tomato plants has been evaulated for its use in this specific experiment and does not pose a plant pest risk therein. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed; that is, the genes that are necessary for pathogenicity have been removed. The vector has been tested and shown not to be pathogenic to a susceptible plant.

6. The ventor agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the anti-sense polygalacturonase gene into a tomato plant cell, was eliminated and is no longer associated with a transformed tomato plant.

7. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tomato genome, the vector does not survive in or on the transformed plants. No mechanism is known to exist in nature to horizontally move an inserted gene from a chromosome of a transformed plant to any other organism.

8. The field test site is small, approximately 1.6 acres.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384), August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 7th day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-5586 Filed 3-9-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket 90-027]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Walnut Trees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the University of California, Davis, to allow the field testing in Yolo County, California, of walnut trees genetically engineered to express an insecticidal crystal protein (delta-endotoxin) from *Bacillus thuringiensis*. The assessment provides a basis for the conclusion that the field testing of these genetically engineered walnut trees will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcres Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental

assessment should be requested under permit number 89-220-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

The University of California, Davis, has submitted an application for a permit for release into the environment, to field test walnut trees genetically engineered to express an insecticidal crystal protein (delta-endotoxin) from *Bacillus thuringiensis*. The field trial will take place in Yolo County, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the walnut trees under the conditions described in the University of California, Davis, application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the University of California, Davis, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The gene encoding an insecticidal crystal protein (delta-endotoxin) from *Bacillus thuringiensis* has been inserted into the walnut chromosome. Expression of insecticidal crystal protein may result in a degree of protection against the feeding damage caused by the larvae of select lepidopteran insects. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, all male flowers will be removed from the walnut trees before they are in full bloom. All female flowers will be isolated from other sources of pollen in isolation bags. Isolation bags will remain on flowers until flowers are no longer fertile and pollen no longer viable. Maturing nuts will be bagged and all nuts will be collected before maturation.

2. The microorganism from which the insecticidal crystal protein gene was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant.

3. Neither the insecticidal crystal protein gene itself, nor the protein product, confers on walnut any plant pest characteristic.

4. The expression of the gene does not provide the transformed walnut trees with any apparent selective advantage over nontransformed walnuts in their ability to be disseminated or to become established in the environment.

5. Select noncoding regulatory regions derived from plant pests have been inserted into the walnut chromosome. These sequences do not confer on walnut any plant pest characteristic.

6. The vector used to transfer the insecticidal crystal protein to the walnut trees has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this field test. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to any susceptible plant.

7. The vector agent, the bacterium that was used to deliver the vector DNA and the marker genes into the plant cell, has been shown to be eliminated and no longer associated with the transformed walnut plants.

8. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

9. The insecticidal crystal protein is a polypeptide which upon ingestion kills only select lepidopteran insects. It is not toxic to other insects, wild or domestic birds, fish or mammals. Because of its safety, its topical application on vegetable crops is permitted up to harvest date.

10. The field test site is small (approximately 0.50 acre) and is surrounded by agricultural land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 7th day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-5584 Filed 3-9-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-026]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that ten applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for

obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
90-031-02	Agricultural Research Service, USDA	01-31-90	Potato plants genetically engineered to contain the delta-endotoxin from *Bacillus thuringiensis* for insect resistance.	Washington.
90-032-01	Monsanto Agricultural Company	02-01-90	Potato plants genetically engineered to contain the coat protein from potato virus X, potato virus Y, and potato leaf roll virus.	Washington.
90-032-02	Monsanto Agricultural Company	02-01-90	Cotton plants genetically engineered to contain the delta-endotoxin from *Bacillus thuringiensis* for insect resistance.	Alabama, Arizona, California, Louisiana, Mississippi, & Texas.
90-032-03	Monsanto Agricultural Company	02-01-90	Potato plants genetically engineered to contain the delta-endotoxin from *Bacillus thuringiensis* for insect resistance, or to contain the coat protein from potato virus X, potato virus Y, and potato leaf roll virus.	Illinois.
90-033-01	BioTechnica Agriculture, Inc.	02-02-90	Corn plants genetically engineered to express 2 marker genes.	Iowa.
90-038-03	Monsanto Agricultural Company	02-07-90	Soybean plants genetically engineered to tolerate the herbicide glyphosate.	Illinois.
90-038-04	Monsanto Agricultural Company	02-07-90	Soybean plants genetically engineered to tolerate the herbicide glyphosate.	Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Missouri, Nebraska, Ohio, Tennessee, & Virginia.
90-038-05	Monsanto Agricultural Company	02-07-90	Soybean plants genetically engineered to tolerate the herbicide glyphosate.	Arkansas, Illinois, & Maryland.
90-043-02	UpJohn Company	02-12-90	Tomato plants genetically engineered to contain the coat proteins of tobacco mosaic virus and tomato mosaic virus.	Michigan.
90-044-05	Du Pont Agricultural Products	02-13-90	Cotton plants genetically engineered to tolerate the herbicide sulfonylurea.	Mississippi.

Done in Washington, DC, this 7th day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-5585 Filed 3-9-90; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Grade/Dukes Timber Sale in the Cuddy Mountain Roadless Area, Payette National Forest, Washington and Adams Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: A notice of intent to prepare an environmental impact statement for proposed development in the Cuddy Mountain Roadless Area on the Payette National Forest, Washington and Adams Counties, Idaho, appeared in the **Federal Register** June 2, 1989 (Vol. 54, No. 105).

This notice is hereby revised to show the title of the environmental impact statement to be an Environmental Impact Statement for the Grade/Dukes Timber Sale in the Cuddy Mountain Roadless Area. This notice also shows that the Responsible Official is Veto J. LaSalle, Payette National Forest Supervisor.

A draft environmental impact statement was released for public review and comment in July 1989. Public review showed a need to more clearly state the proposed action. The change in title of the environment impact statement responds to that need.

The final environmental impact statement is scheduled for completion in May 1990. No other revisions are made.

FOR FURTHER INFORMATION CONTACT: Phil Gilman or Pam Gardner, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638, (208) 634-8151.

Dated: March 2, 1990.

Phil Gilman,

Branch Chief, Planning, Programming and Information.

[FR Doc. 90-5542 Filed 3-9-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Biotechnology Technical Advisory Committee; Partially Closed Meeting

A meeting of the Biotechnology Technical Advisory Committee will be held April 13, 1990, 9 a.m., in the Herbert C. Hoover Building, room 4830, 14th and Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to biotechnology and related equipment or technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Current status of TAC proposal to reduce controls applicable to genetically modified micro-organisms.
4. Equipment/instrumentation issues in the context of commonality to pharmaceutical production and biological warfare.
5. Department of Defense Perspectives on the Biological Defense Research Program.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may

be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, BXA Room 4069A, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: March 6, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90-5544 Filed 3-9-90; 8:45 am]

BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held April 10 & 11, 1990, 9 a.m., Herbert C. Hoover Building, Room 1617F, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of the following ECCN's:
   - (equipment specially designed for in-service monitoring of acoustic emissions).
   - 1529 (electronic measuring/calibrating/testing equipment).
   - 1533 (signal analyzers).
   - 1549 (photomultiplier tubes).
   - 1555 (electron tubes and specially designed components).
   - 1556 (optical elements and elements for optical tubes).
   - 1584 (oscilloscopes and specially designed components).
   - 1585 (photographic equipment).
   - 2414 (specialized military training equipment).

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: March 6, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90-5545 Filed 3-9-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of Final Determination of Dumping and Subsidizing Respecting Polyphase Induction Motors of an Output Exceeding 200 Horsepower or 150 Kilowatts, Secretariat File No. CDA-89-1904-01.

SUMMARY: Notice is hereby given that the panel review of the subject determination, Secretariat File No. CDA-89-1904-01, was automatically terminated and the panelists discharged on January 10, 1990, pursuant to rule 73(2) of the *Article 1904 Panel Rules*, as amended.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing doemstic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada

established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

On April 8, 1989, the Deputy Minister of National Revenue for Customs and Excise published a final determination of dumping respecting polyphase induction motors of an output exceeding 200 horsepower or 150 kilowatts originating in or exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America.

On May 1, 1989, Toshiba International Corporation (Houston, Texas) filed a Request for Panel Review of that final determination. On May 13, 1989 the Canadian International Trade Tribunal published in the *Canada Gazette* a final determination that the dumping was not causing injury.

On January 2, 1990, the Deputy Minister of National Revenue for Customs and Excise filed a Notice of Motion requesting that the panel review be terminated; on January 19, 1990, Toshiba International Corporation (Houston, Texas), the only other participant, filed a Notice of Motion requesting the panel review be terminated. All participants to the panel review having filed Notices of Motion requesting termination, the Panel Review be terminated and the panel discharged pursuant to amended Rule 73(2).

Dated: January 29, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-5689 Filed 3-9-90; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on March 23, 1990, at the Holiday Inn, 45 Industrial Highway, Essington, PA; telephone: (215) 521-2400. The Council will begin the meeting at 10 a.m., and adjourn at 4 p.m. The meeting may be lengthened or shortened depending upon progress on the agenda.

The Council will discuss Swordfish Fishery Management Plan Amendment #1 issues, public hearing comments, and advise the South Atlantic Fishery Management Council of the Mid-Atlantic Council's position. In addition, the Council may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: March 5, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5495 Filed 3-9-90; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has established an ad hoc bycatch committee which will explore, with the National Marine Fisheries Service and the North Pacific Council's groundfish plan teams, the range of alternatives to be analyzed for bycatch measures for amendments to the groundfish fishery management plan for the Bering Sea and Aleutian Islands. The committee will meet on March 14-15, 1990, at the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, WA. The public meeting will begin on March 14 at 1:30 p.m., pst.

For more information contact Hal Weeks, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271-2809.

Dated: March 6, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5496 Filed 3-9-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Exempt Certification Requirements to Include Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

March 7, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and exempt certification requirements.

EFFECTIVE DATE: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa and exempt certification arrangement between the Governments of the United States and the People's Republic of Bangladesh is being amended to include the coverage of silk blend and other vegetable fiber textiles and textile products in Categories 800-899.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 53 FR 46484, published on November 17, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 7, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Bangladesh which were not properly visaed by the Government of the People's Republic of Bangladesh.

Effective on March 14, 1990 for goods produced or manufactured in Bangladesh and exported from Bangladesh on and after December 1, 1989, you are directed to amend further the existing export visa and exempt certification requirements established in the directive of November 14, 1988 to require a visa or exempt certification for silk blend and other vegetable fiber textiles and textile products in Categories 800–899.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa or exempt certification shall be denied entry and a new visa or visa waiver will be required.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–5543 Filed 3–9–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revised Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides revised adjusted standardized amounts to be used for FY 1990 under the CHAMPUS diagnosis related group (DRG) payment system. It also describes non-regulatory changes made to the CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS) in accordance with Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989.

EFFECTIVE DATE: The revised adjusted standardized amounts in this notice are effective for admissions occurring on or after March 1, 1990. All other provisions in this notice are effective as described in this notice.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361–4005.

To obtain copies of this document, see the "ADDRESS" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987, (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331) and December 16, 1988 (53 FR 50515). An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, wherever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS.

Pursuant to these final rules, we published a notice of revised rates on October 10, 1989, (54 FR 41487) to conform to changes made to the Medicare PPS. These changes were effective for admissions occurring on or after October 1, 1989.

Public Law 101–239, which was enacted on December 19, 1989, contains a number of provisions which affect the Medicare PPS and consequently the CHAMPUS DRG–based payment system. The Health Care Financing Administration (HCFA) published these changes in the **Federal Register** on December 29, 1989 (54 FR 53753). Many of the provisions of Public Law 101–239 do not affect CHAMPUS, while others, such as section 6011, will be implemented in later HCFA **Federal Register** notices, and thus we are not taking any action on them at this time. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the CHAMPUS DRG-Based Payment System.

Following is a discussion of the changes HCFA has made to the Medicare PPS (as contained in HCFA's December 29, 1989, notice) which affect the CHAMPUS DRG-based payment system.

A. Changes in the Update Factors

Section 6003(a) of Public Law 101–239 specifies the update factors to be used in the Medicare PPS for discharges occurring on or after January 1, 1990, and before October 1, 1990. The same update factors will be used for the CHAMPUS DRG-based payment system, although the effective date is slightly different. The update factors are:

The market basket percentage increase plus 4.22 percent (which is 9.72 percent above FY 1989 rates) for hospitals located in rural areas;

The market basket percentage increase plus 0.12 percent (which is 5.62 percent above FY 1989 rates) for hospitals located in large urban areas; and

The market basket percentage increase minus 0.53 percent (which is 4.97 percent above FY 1989 rates) for hospitals located in other urban areas.

As for the Medicare PPS, for the purposes of computing payment rates for FY 1991 these update factors will be deemed to have been in effect for all admissions occurring on or after October 1, 1989.

B. Reductions in Payments for Capital-Related Costs

CHAMPUS reimburses hospitals for our share of hospitals' capital costs. As provided for in our previous final rules, these annual payments are subject to any reductions which are required for the Medicare PPS. Accordingly, for days of care provided between October 1, 1989, and December 31, 1989, a reduction of two (2) percent will be applied to all capital costs. For days of care provided between January 1, 1990, and September 30, 1990, the required reduction will be fifteen (15) percent.

C. Cancer Hospitals

Any hospital which is classified as a cancer hospital by HCFA is exempt from the CHAMPUS DRG-based payment system. This provision is unchanged, and any hospital whose status is affected by the provisions of section 6004(a) of Public Law 101–239 may become exempt from the CHAMPUS DRG-based payment system if it is classified as a cancer hospital must notify their CHAMPUS claims processing contractor of this designation promptly (within sixty days) to ensure that they are exempted from our DRG system. The effective date of such exemption shall be the effective date of that designation by HCFA where the CHAMPUS contractor has been notified promptly.

II. Future Medicare PPS Changes Which Affect the CHAMPUS DRG-Based Payment System.

There are a number of provisions of Public Law 101–239 which HCFA will implement through future rulemaking documents. Several of these provisions will also affect the CHAMPUS DRG-based payment system, and the

following is a discussion of the impact of these provisions.

A. Sole Community Hospitals

CHAMPUS will continue to recognize (and exempt from our DRG-based payment system) sole community hospitals which are designated as such under the Medicare PPS, including any changes implemented by HCFA under section 6003(e) of Public Law 101-239.

B. Geographic Classification of Hospitals

The CHAMPUS DRG-based payment system uses the same geographic classification of hospitals and wage indexes used in the Medicare PPS. Sections 6003 (h) and (i) of Public Law 101-239 provide for a number of changes in these areas for the Medicare PPS. Any future changes which affect provisions which CHAMPUS duplicates (as described in our previous final rules) will apply to the CHAMPUS DRG-based payment system.

C. Medical Education Payment for Nursing or Allied Health Education Programs

CHAMPUS' annual payments to hospitals for medical education are based on those costs allowed by HCFA. We will recognize any changes to these costs which result from implementation of section 6205(a) of Public Law 101-239. The effective date for these changes under CHAMPUS will coincide to that for the Medicare PPS.

III. Deficit Reduction.

The provisions of Public Law 99-117, the Balanced Budget and Emergency Deficit Control Act of 1985 (generally referred to as the Gramm-Rudman-Hollings Act), do not apply specifically to CHAMPUS, and no reduction in CHAMPUS payments will be made based on the provisions of that law. Mention of this is made here only because of the continuing interest in whether CHAMPUS will make such reductions and because the December 29 HCFA notice contains information on the application of the Act to Medicare.

IV. Revised Adjusted Standardized Amounts.

Table 1 provides the revised adjusted standardized amounts to be used under the CHAMPUS DRG-based payment system effective for admissions occurring on or after March 1, 1990. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: March 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Table 1—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost-Share Per Diem

Effective for admissions occurring on or after March 1, 1990.

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

National Large Urban Adjusted Standardized Amount	$2,914.37
Labor portion	2,151.97
Nonlabor portion	762.40
National Other Urban Adjusted Standardized Amount	$2,883.43
Labor portion	2,129.12
Nonlabor portion	754.31
National Rural Adjusted Standardized Amount	$2,847.98
Labor portion	2,230.25
Nonlabor portion	617.73
Cost-Share per diem for beneficiaries other than dependents of active-duty members	$235.00

[FR Doc. 90-5520 Filed 3-9-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of the Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 3, 1990; Tuesday, April 10, 1990; Tuesday, April 17, 1990; and Tuesday, April 24, 1990 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of the Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: March 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 90-5519 Filed 3-9-90; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 150. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 150 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 1990.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance

Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA:		
ADAK 5/	$ 77	03-01-90
ANAKTUVUK PASS	140	01-01-88
ANCHORAGE		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
ATQASUK	215	01-01-88
BARROW	148	05-01-89
BETHEL	143	03-01-90
BETTLES	110	01-01-88
COLD BAY	125	02-01-89
COLDFOOT	122	01-01-88
CORDOVA	150	03-01-90
DILLINGHAM	114	01-01-88
DUTCH HARBOR-UNALASKA	127	01-01-88
EIELSON AFB		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
ELMENDORF AFB		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
FAIRBANKS		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
FT. RICHARDSON		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
FT. WAINWRIGHT		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
HOMER	130	03-01-90
JUNEAU	123	03-01-90
KATMAI NATIONAL PARK	148	01-01-88
KENAI		
05-01--09-30	149	05-01-90
10-01--04-30	127	03-01-90
KETCHIKAN	127	03-01-90
KING SALMON 3/	134	01-01-88
KODIAK	118	03-01-90
KOTZEBUE 3/	153	03-01-90
KUPARUK OILFIELD	127	01-01-88

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA: (CONT'D)		
MURPHY DOME 3/		
05-15--09-15	$124	05-15-90
09-16--05-14	109	03-01-90
NOATAK	143	04-01-88
NOME	129	03-01-90
NOORVIK	143	04-01-88
PETERSBURG	127	03-01-90
POINT HOPE	160	01-01-88
POINT LAY	179	01-01-88
PRUDHOE BAY	121	03-01-90
SAND POINT	103	01-01-88
SEWARD	102	03-01-90
SHUNGNAK	143	03-01-90
SITKA-MT. EDGECOMBE	127	03-01-90
SKAGWAY	127	03-01-90
SPRUCE CAPE	118	03-01-90
ST. MARY'S	100	01-01-88
ST. PAUL ISLAND	115	01-01-88
TANANA	129	03-01-90
TOK	112	03-01-90
UMIAT	160	01-01-88
UNAKAKLEET	105	01-01-88
VALDEZ		
05-01--10-31	169	05-01-90
11-01--04-30	128	03-01-90
WAINWRIGHT	165	01-01-88
WALKER LAKE	136	01-01-88
WRANGELL	127	03-01-90
YAKUTAT	110	01-01-88
OTHER 3, 4/	94	02-01-89
AMERICAN SAMOA	102	05-01-89
GUAM, M.I.	129	05-01-89
HAWAII:		
ISLAND OF HAWAII: HILO	76	05-01-89
ISLAND OF HAWAII: OTHER	99	05-01-89
ISLAND OF KAUAI	142	05-01-89
ISLAND OF KURE 1/	13	05-01-89
ISLAND OF MAUI: KIHEI		
04-01--12-19	135	05-01-89
12-20--03-31	147	12-20-89
ISLAND OF MAUI: OTHER	99	05-01-89

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
HAWAII: (CONT'D)		
ISLAND OF OAHU	$126	05-01-89
OTHER	99	05-01-89
JOHNSTON ATOLL 2/	35	02-01-89
MIDWAY ISLANDS 1/	13	01-01-88
NORTHERN MARIANA ISLANDS:		
ROTA	76	01-01-88
SAIPAN	115	02-01-89
TINIAN	68	01-01-88
OTHER	20	01-01-88
PUERTO RICO:		
BAYAMON		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
CAROLINA		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
FAJARDO (INCLUDING LUQUILLO)		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
ROOSEVELT ROADS		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
SABANA SECA		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
OTHER	121	11-01-88
VIRGIN ISLANDS OF THE U.S.		
05-01--11-30	158	05-01-90
12-01--04-30	194	03-01-90
WAKE ISLAND 2/	21	04-01-89
ALL OTHER LOCALITIES	20	01-01-88

BILLING CODE 3810-01-C

Maximum per diem rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and possessions of the United States by Federal Government civilian employees

Footnotes

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.

Dated: March 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-5518 Filed 3-9-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Description of Functions and Solicitation of Nominations

AGENCY: National Assessment Governing Board.

ACTION: Notice.

SUMMARY: This notice describes the functions of the National Assessment Governing Board and announces the solicitation of nominations for persons to fill a vacancy on the Board in the category of local school board member. This document is intended to notify the general public of their opportunity to submit nominations for the vacant seat.

FOR FURTHER INFORMATION CONTACT: Daniel B. Taylor, Deputy Executive Director, to obtain details about qualifications and nominating procedures.

PLACE: National Assessment Governing Board, 1100 L Street, NW., Suite 7322, Washingotn, DC 20005-4013, telephone (202) 357-6938.

DATES: The solicitation period terminates March 31, 1990. To receive full consideration nominations should be received at the above address by March 31, 1990.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(1) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus Hawkins-Robert T. Stafford Elementary and Secondary Education School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to formulate the policy guidelines for the National Assessment of Educational Progress; selecting subjects to be assessed; identifying appropriate achievement goals; developing assessment objectives; developing test specifications; designing the methodology of the assessment; developing guidelines and standards and procedures for interstate, regional, and national comparisons; and taking appropriate actions needed to improve the form and use of the National Assessment.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-5578 Filed 3-9-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF83-413-004]

Continental Energy Associates; Small Power Production and Cogeneration Facilities—Qualifying Status; Correction to Notice Comment Period

March 6, 1990.

This notice corrects the discrepancy in the date for filing interventions, protests and comments to the notice issued February 9, 1990, and published in the **Federal Register** on February 21, 1990 (55 FR 6039). The corrected due date is March 15, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5513 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-231-000, et al.]

Portland General Electric Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 5, 1990.

Take notice that the following fillings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER90-231-000]

Take notice that on February 26, 1990, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) rate which became effective with service on and after June 25, 1989. This filing includes a revised Appendix 1 Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement the tariff change from the Public Utility Commission of Oregon.

PGE states that the filing shows that our ASC rate as approved by BPA is 33.61 mills/kWh.

Comment date: March 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Power & Light Company

[Docket No. ER90-83-000]

Take notice that on February 9, 1990, Utah Power & Light Company tendered for filing additional information requested by staff concerning the current effective rate for non-firm transmission service under Paragraph 5.1.2 of the Antelope Substation Capacity Entitlement, Operation & Maintenance Agreement between Idaho Power Company and PacifiCorp.

Comment date: March 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Georgia Power Company

[Docket No. EC90-12-000]

Take notice that on February 26, 1990, Georgia Power Company (Georgia Power) tendered for filing an application for an Order authorizing the sale of the East Dalton-Oostanaula 230 kV Transmission Line; the East Dalton-Dalton 115 kV Transmission Line; the East Dalton-Lafayette 115 kV Transmisson Line; the East Dalton-North Fairmont 115 kV Transmission Line; the East Dalton-Tunnel 230 kV Transmission Line; and all real and personal property, including engineering drawings, comprising the Tunnel Hill 230/115 kV substation to the City of Dalton, Georgia ("Dalton") acting through the Board of Water, Light and Sinking Fund Commissioners.

Georgia Power states that the proposed sale will allow Dalton to minimize its potential future liability for payments in lieu of property taxes for those transmission facilities owned by Dalton outside Whitefield County, Georgia. Such minimized exposure will avoid a possible future increase in both parties' transmission costs and, ultimately will benefit the individual rate payer.

At the time of the sale of the transmission and substation facilities to Dalton, Georgia Power will purchase, with the approval of the Securities and Exchange Commission, certain transmission facilities from Dalton which will allow for future enhancements to the Integrated Transmission System and ultimately result in savings to the individual rate payer.

Comment date: March 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket Nos. ER85-461-000, ER85-521-001, ER86-258-001, ER86-478-001, ER86-567-001, ER87-404-001, ER88-120-000]

Take notice that Kansas Gas and Electric Company (KG&E) on February 21, 1990, tendered for filing compliance changes in its FERC Electric Service Tariff Nos. 87, 89, 128, 134, 135, 144, 149, 152, 153, 154, 155, 156, 157, 161, 162, 166, 169, and 181. KG&E states that the requirements of the Opinion No. 338, issued by the Commission on December 7, 1989 in Docket No. ER85-l461-001, et al.

Copies of the filing were served upon the affected customers and other parties to these dockets.

Comment date: March 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Texas-New Mexico Power Company

[Docket No. ES90-28-000]

Take notice that on Feburary 27, 1990, Texas-New Mexico Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act to issue and renew from time to time up to $120 million principal amount of short-term notes with final maturities no later than April 1, 1991.

Comment date: March 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services

[Docket No. ER90-126-000]

Take notice that on February 21, 1990, Entergy Services tendered for filing Amendment No. 1 to the Interchange Agreement between Cajun Electric Power Cooperative, Inc. and Mississippi Power & Light Company.

Comment date: March 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket No. ER90-230-000]

Take notice that Boston Edison Company of Boston, Massachusetts (Edison) on Feburary 23, 1990, tendered for filing an amendment to its Exchange Agreement (FERC Rate No. 143) with New England Power Company (NEP), which was accepted by the Commission on May 16, 1984 in Docket No. ER84-334-000.

Under the Amendment the parties would reimburse each other for benefits, inadvertently, received by one party from the other as a result of the operation of the Exchange Agreement and the Performance Incentive Program of New England Power Pool.

Edison requests that the amendment be made effective on October 1, 1989.

Copies of the filing have been served upon NEP and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: March 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ES90-27-000]

Take notice that on February 27, 1990, Kentucky Utilities Company (Applicant) filed an application with the Commission seeking an order pursuant to section 204 of the Federal Power Act, authorizing the issuance of up to $100,000,000 of unsecured short-term notes and commercial paper to be issued from time to time, with a final maturity date of not later than December 31, 1991.

Comment date: March 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp, Doing Business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER90-229-000]

Take notice that PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company (PacifiCorp), on February 22, 1990, tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, Second Revised Sheet No. 5D superseding First Revised Sheet No. 5D (Index of Purchasers Executing Service Agreements) under PacifiCorp/Pacific Power & Light Company's FERC Electric Tariff, Original Volume No. 3 (Tariff), and a Service Agreement between PacifiCorp and Rocky Mountain Generation Cooperative, Inc. (RMGC) dated December 19, 1989 under Service Schedule PPL-3 of the Tariff.

The Service Agreement provides for the sale of non-firm power and energy for resale in accordance with Service Schedule PPL-3 of the Tariff and was effective July 1, 1989. This Service will be available to RMGC on a year-to-year basis until terminated in writing by either party, PacifiCorp's filing herein is provided to add RMGC to the Index of Purchasers Executing Service Agreements under the Tariff.

PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of July 1, 1989 be assigned to the Service Agreement, this date being consistent with the effective date shown on the Service Agreement.

Copies of this filing were supplied to RMGC and the Wyoming Public Service Commission.

Comment date: March 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5502 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8615-002, New Hampshire]

Fiske Hydro, Inc.; Availability of Environmental Assessment

March 5, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment to license for the proposed Fiske Mill Water Power Project located on the Ashuelot River in Cheshire County, near the town of Hinsdale, New Hampshire, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5512 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2392-004, Vermont; New Hampshire]

Georgia Pacific Corp.; Availability of Environmental Assessment

March 5, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Gilman Hydroelectric Project located on the Connecticut River in Essex County, Vermont and Coos County, New Hampshire, near Lunenburg, Vermont and Dalton, New Hampshire, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5517 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2392, et al.]

Hydroelectric Applications (Great Northern Nekoosa Corp., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Filing:* Great Northern Nekoosa Corporation (Great Northern) filed a complaint against Georgia-Pacific Corporation (Georgia-Pacific), alleging antitrust-related violations of section 10(h) of the Federal Power Act (FPA).

b. *Project No.:* P-2392, Gilman Project, located on the Connecticut River in Essex County, Vermont, and in Coos County, New Hampshire. Licensee: Georgia-Pacific.

c. *Project No.:* P-2492, Vanceboro Project, located on the St. Croix River, in Washington County, Maine. Licensee: Georgia-Pacific.

d. *Project No.:* P-2618, Grand Lake Project, located on the West Branch of the St. Croix River, in Washington County, Maine. Licensee: Georgia-Pacific.

e. *Project No.:* P-2660, Forest City Project, located on the St. Croix River, in Washington County, Maine. Licensee: Georgia-Pacific.

f. *Date Filed:* November 17, 1989.

g. *Pursuant to:* Section 10(h) of the Federal Power Act.

h. *Contact:* LeBoeuf, Lamb, Leiby and MacRae, 520 Madison Avenue, New York, NY 10022, (212) 715-800, Attn: Thomas E. Mark, Attorney, for Great Northern Nekoosa Corporation.

i. *FERC Contact:* Mr. Allan Greenbaum, (202) 357-8132.

j. *Comment Date:* March 26, 1990.

k. *Description of the Complaint:* Great Northern, licensee for Project Nos. 2255, 2291, 2292, 2458, 2520, 2572, and 2634 (Great Northern Projects), filed a complaint against Georgia-Pacific, licensee for Project Nos. 2392, 2492, 2618, and 2660 alleging antitrust-related violations of section 10(h) of the FPA arising out of the attempt by Georgia-Pacific to hostilely take over Great Northern by an unsolicited stock purchase offer. The complaint was filed in the Georgia-Pacific Projects and seeks a Commission investigation to minimize the alleged anticompetitive consequences of the takeover. The complaint is related to two other pleadings filed by Great Northern with its complaint: (1) A motion for an order and request for expedited action in the Great Northern Projects; and (2) a motion for late intervention and request to deny license application, or in the alternative, motion to stay further proceedings and request for oral hearing in Project No. 2392-004, *Georgia-Pacific Corporation.*

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. *Type of Application:* Transfer of License.

b. *Project No.:* 3246-005.

c. *Date filed:* January 2, 1990.

d. *Applicant:* Missouri Joint Municipal Electric Utility, Commission (licensee), City of Alton, Illinois (transferee).

e. *Name of Project:* Melvin Price Lock and Dam.

f. *Location:* On the Mississippi River in St. Charles County, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Marc R. Poirier, Esq., Spiegel & McDiarmid, 1350 New York Avenue, NW., Suite 1100, Washington, DC 20005.

Mr. John L. Sachs, Esq., Olwine, Connelly, Chase, O'Donnell &Weyher, 1701 Pennsylvania Avenue, NW., Suite 1000, Washington, DC 20006.

i. *FERC Contact:* Michael Dees (202) 357-0807.

j. *Comment Date:* March 21, 1990.

k. *Description of Application:* On January 2, 1990, the licensee and transferee filed a joint application for transfer of the license for the Melvin Price Lock and Dam Project No. 3246. The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the tranfer is to allow the sale of the project.

l. This notice also consists of the following standard paragraphs: B and C.

3. a. *Type of Application:* Surrender of License.

b. *Project No.:* 3450–006.

c. *Date Filed:* January 5, 1990.

d. *Applicant:* Beaver Falls Municipal Authority.

e. *Name of Project:* Eastvale Water Power Project.

f. *Location:* On the Beaver River near Beaver Falls, Beaver County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles Andrew, Beaver Falls Municipal Authority, 1425 8th Avenue, P.O. Box 400, Beaver Falls, PA 15010, (412) 846–2400.

i. *FERC Contact:* Ed Lee (202) 357–0809.

j. *Comment Date:* March 21, 1990.

k. *Description of Application:* The license for this project was issued on December 15, 1983, for an installed capacity of 440-kW. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

4. a. *Type of Application:* Surrender of license.

b. *Project No.:* 7327–023.

c. *Date filed:* January 11, 1990.

d. *Applicant:* Greenfields Irrigation District and Turnbull Partners, Ltd.

e. *Name of Project:* Turnbull Drops.

f. *Location:* On the Bureau of Reclamation's Spring Valley Canal, in Teton County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jerry Nypen, Manager, Greenfields Irrigation District, P.O. Box 157, Fairfield, MT 59436.

i. *FERC Contact:* Michael Spencer at (202) 357–0846.

j. *Comment Date:* April 2, 1990.

k. *Description of Proposed Action:* The proposed run-of-the canal project would utilize the U.S. Bureau of Reclamation's Spring Valley Canal. The Licensee seeks to surrender its license because it will be impossible to meet the deadline for start of construction.

The Licensee states that no construction has been done.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. *Type of Application:* Transfer of License.

b. *Project No.:* 7932–011.

c. *Date filed:* January 20, 1990.

d. *Applicant:* Lt. Col. Warren H. Taylor.

e. *Name of Project:* Tolles Hill Dam Project.

f. *Location:* On the Black River, in Windsor County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lt. Col. Warren H. Taylor, RFD 1, Rutland, VT 05701, (802) 775–5327.

i. *FERC Contact:* Mary Golato (202) 357–0804.

j. *Comment Date:* March 22, 1990.

k. *Description of Project:* Lt. Col. Warren H. Taylor proposes to transfer his license for the Tolles Hill Dam Project No. 7932 to Tolles Hydro, Inc. The transferor would like to sell the Tolles Hill Dam Project to the transferee.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6. a. *Type of Application:* Surrender of License.

b. *Project No.:* 8596–005.

c. *Date filed:* January 17, 1990.

d. *Applicant:* Jason M. Hines.

e. *Name of Project:* Dublin Hydro Project.

f. *Location:* On Stanley Brook, Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jason M. Hines, P.O. Box 76, Amherst, NH 03031, (603) 654–2678.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* April 5, 1990.

k. *Description of Project:* On February 22, 1988, a license was issued to construct, operate and maintain the Dublin Hydro Project No. 8596. The project would consist of: (a) A 17.5-foot-high, 238-foot-long concrete and stone masonry, gravity structure; (b) a reservoir with a surface area of 53 acres and a gross storage capacity of 260 acre-feet; (c) a 1,350-foot-long, 36-inch-diameter, steel penstock; (d) a 16-foot by 20-foot reinforced concrete powerhouse housing one 150-kW turbine/generator unit; (e) 150-foot-long by 15-foot-wide tailrace; (f) the 480-volt generator leads; (g) the three-phase, 150/kVA, 480/12,470-volt step-up transformer; (h) the 70-foot-long, 12,470-volt overhead transmission line; and (i) appurtenant facilities.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. a. *Type of Application:* Surrender of License.

b. *Project No.:* 9843–003.

c. *Date filed:* May 1, 1989.

d. *Applicant:* Prodek.

e. *Name of Project:* Medina Dam Water Power Project.

f. *Location:* In Medina and Bandera Counties, Texas, on the Medina River.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Richard O. Newman, President, Prodek, Inc., 2431 E. 61st Street, Suite 310, Tulsa, OK 74136, (918) 492–1424.

i. *FERC Contact:* Mary Golato (dmt) (202) 357–0804.

j. *Comment Date:* April 19, 1990.

k. *Description of Project:* The license for this project was issued on December 28, 1987, for an installed capacity of 1,500 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction was commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

8. a. *Type of Application:* Minor License.

b. *Project No.:* 10021–001.

c. *Date filed:* November 29, 1989.

d. *Applicant:* Beaver City Corporation.

e. *Name of Project:* Beaver City Canyon Upper Plant Project.

f. *Location:* On Beaver River in Beaver County, Utah near the town of Beaver, within the Fishlake National Forest. The proposed project would be located upstream of Beaver City's license Project No. 1858 and downstream of Utah Power and Light's exemption Project No. 814. T29S, R6W, Salt Lake Meridian and Base.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Honorable Robert H. Lee, P.O. Box 271, Beaver, Utah 84713, (801) 438–2451.

Timothy M. Jones, P.E., 45 East 500 North, Richfield, Utah 84701, (801) 896–8266.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 357–0842.

j. *Comment Date:* April 19, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An 8-foot-high diversion dam at elevation 7,259 feet; (2) a 30-inch to 24-inch diameter, 12,200-foot-long iron penstock; (3) a 15-foot-wide, 26-foot-long powerhouse containing one generating unit with an installed capacity of 650 kW, operating under a head of 464 feet, producing an estimated average annual generation of 3,529,000 kWh; (4) a tailrace; (5) a 12,500-foot-long, 12.47-kV transmission line; and (6) appurtenant facilities.

l. *Purpose of Project:* To produce electrical power for municipal purpose of Beaver City.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9a. Type of Application: Preliminary Permit (This permit application differs from South Fork Irrigation District's (SFID) permit application P-10786-000, in that SFID is seeking municipal preference in this case.).

b. Project No.: 10798-000.

c. Date Filed: June 7, 1989.

d. Applicant: South Fork Irrigation District.

e. Name of Project: West Valley Pumped Storage Hydroelectric Project.

f. Location: On Tule Lake Reservoir (Moon Lake) and Cedar Creek in Lassen County, California, near the town of Likely. The project would occupy land administered by the Bureau of Land Management. T39N, R14E, and T38N, R13E and R14E, Mount Diablo Base and Meridian.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Donald R. Pope, Esquire, 8282 South Ogden Circle, Littleton, CO 80122, (303) 798-6280.

i. FERC Contact: Ms. Deborah Frazier-Stutely at (202) 357-0842.

j. Comment Date: April 4, 1990.

k. Competing Applications: Project No.: 10786-000. Date Filed: June 1, 1989. Comment Date: September 9, 1989.

l. Description of Project: The proposed pumped storage project would consist of: (1) The existing 3,000-acre Tule Lake Reservoir (Moon Lake) with a storage capacity of 35,000 acre-feet at elevation 5,500 feet msl to be utilized as the upper reservoir; formed by (2) the existing 6-foot-high, 1,100-foot-long earthen dam; (3) an intake-control structure; (4) an 18,000-foot-long buried tunnel; (5) a powerhouse-pump station containing four vertical pump turbines with combined installed capacity of 264,000 kW, producing an average annual energy output of 542,880,000 kWh discharging into; (6) a 184-acre reservoir on Cedar Creek with a storage capacity of 8,280 acre-feet at elevation 4,948 feet msl to be utilized as the lower reservoir formed by; (7) a 90-foot-high roller compacted concrete dam; and (8) a 100-mile-long, 230-kV transmission line tying into an existing Bonneville Power Administration line.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $427,000.

m. Purpose of Project: Power would be sold to a utility in the project area.

n. This notice also consists of the following standard paragraphs: A8, B, C, and D2

10a. Type of Application: Preliminary Permit.

b. Project No.: 10832-000.

c. Date Filed: October 11, 1989.

d. Applicant: Pacific Western, Inc.

e. Name of Project: Ahsahka Hydroelectric Power Project.

f. Location: On the North Fork of Clearwater River in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Charles D. Cuddy, P.O. Box 64, Orofino, Idaho 83544, (208) 476-4643.

i. Commission Contact: Nanzo T. Coley, (202) 357-0840.

j. Comment Date: March 26, 1990.

k. Competing Applications: Project No.: 10819-000. Comment Date: December 11, 1989.

l. Description of Project: The applicant proposes to utilize the proposed Clearwater Fish Hatchery (CFH) water supply system, which is currently beign designed by the U.S. Army Corps of Engineers (Corps). The Corps proposes to construct an 18-inch and a 36-inch diameter pipe through its existing Dworshak dam to supply water to the CFH and the Dworshak National Fish Hatchery. This water supply would be intercepted by the proposed project and then discharged into a distribution tank, which would divide the flows between the two hatcheries. The proposed project would consist of: (1) A proposed 18-inch and a bifurcated 36-inch diameter penstock; (2) a proposed powerhouse containing generating units with a total rated capacity of 2.5 MW; (3) a proposed one-mile long, 13.2-kV transmission line; and (4) appurtenant facilities. The estimated average annual energy output for the project is 15,100 MWh. The applicant estimates the cost of the work to be performed under the preliminary permit at $35,000.

m. Purpose of Project: Power produced at the project would be sold to the Washington Water Power Company.

n. This notice also consists of the following standard paragraphs: A8, A9, A10, B, C, and D2.

11a. Type of Application: Preliminary Permit.

b. Project No.: 10840-000.

c. Date Filed: October 27, 1989.

d. Applicant: Tri-Dam Power Authority.

e. Name of Project: Goodwin Hydroelectric Project.

f. Location: On Stanislaus River in Tuolumne and Calaveras Counties California, near the towns of Oakdale and Knight's Ferry. A portion of the project would be located on the U.S. Army Corps of Engineers lands. T1S, R12E, Mount Diablo Meridian and Base.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Donald B. Thompson, General Manager, Tri-Dam Power Authority, P.O. Box 1158 Pinecrest, CA 95364. Mr. Jeffrey A. Meith, Minasian, Minasian, Minasian, Spruance, Baber, Meith & Soares, Attorneys at Law, P.O. Box 1679 Oroville, CA 95965-1679.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 357-0842.

j. Comment Date: April 2, 1990.

k. Description of Project: The proposed project would consist of: (1) The existing 101-foot-high, 460-foot-long Goodwin Dam; (2) an existing 70 acre reservoir with a total storage capacity of 500 acre-feet at elevation 359 feet msl; (3) the existing intake structure for the Oakdale South Canal; (4) a 750-foot-long section of the Oakdale South Canal; (5) a gated structure within the canal; (6) an intake structure on the north side of the canal; (7) a 11-foot-diameter, 75-foot-long penstock; (8) a 40-foot-wide, 40-foot-long powerhouse containing two generating units with a total installed capacity of 5,000 kW, producing an estimated average annual energy of 20 GWH; (9) a 1,000-foot-long, 17-kV transmission line tieing into an existing Pacific Gas and Electric Company line; and (10) a 1,000-foot-long access road.

No new roads will be needed to conduct the studies. The applicant estimates that cost of studies to be conducted under the preliminary permit at $33,000.

l. Purpose of Project: Project power would be sold to an electric utility within the state of California.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 10844-000.

c. Date Filed: November 13, 1989.

d. Applicant: Douglas R. Smith.

e. Name of Project: Smith/French Creek Water Power Project.

f. Location: On French Creek, a tributary to the North Fork of Feather River, in Butte County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Douglas R. Smith, 808 Via del Monte, Palos Verdes Estates, California 90274 (213) 378-0543.

i. Commission Contact: Nanzo T. Coley, (202) 357-0840.

j. Comment Date: April 16, 1990.

k. Description of Project: The proposed project would utilize, in part, Lassen and Plumas National Forest. The proposed project would consist of: (1) A proposed 10-foot-high diversion dam; (2)

a proposed 36-inch-diameter, 1,625-foot-long flume; (3) a proposed 30-inch-diameter, 1,125-foot-long penstock; (4) a proposed powerhouse containing one generating unit rated at 4,400 kW; (5) a proposed 1.5-mile-long, 12-kV or a 6.5-mile-long, 13.8-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 25,929,600 KWh. The applicant estimates the cost of the work to be performed under the preliminary permit at $25,000.

l. Purpose of Project: Power produced at the project would be sold to the Pacific Gas & Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 10865–000.

c. Date Filed: December 27, 1989.

d. Applicant: Warm Creek Hydro, Inc.

e. Name of Project: Warm Creek.

f. Location: On Warm Creek in sections 24 and 25, T38N, R6E, Willamette Meridan, near Deming in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Martin W. Thompson, 411–198th Avenue NE., Bellevue, WA 98004–5515, (206) 453–7327.

i. FERC Contact: Ms. Julie Bernt, (202) 357–0839.

j. Comment Date: April 2, 1990.

k. Description of Project: The proposed run-of-river project would consist of: (1) An 8-foot-high diversion structure at elevation 2,720 msl; (2) a 6,000-foot-long, 2.5-foot-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 3,600 kW; and (4) a 4-mile-long transmission line. The applicant estimates the average annual energy production at 13.9 GWh and the cost of the work to be performed under the preliminary permit at $300,000.

l. Purpose of Project: The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control,

navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 5, 1990, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5501 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-843-000, et al.]

Trunkline Gas Co., et al.; Natural gas certificate filings

February 28, 1990.

Take notice that the following fillings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP90-843-000]

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP90-843-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of National Steel Corporation (National Steel), under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 67,000 dt of natural gas per day for National Steel from receipt points located in Illinois, Louisiana, offshore Louisiana, Tennessee, offshore Texas and Texas to a delivery point located in Douglas County, Illinois. Trunkline anticipates transporting, on an average day 67,000 dt and an annual volume of 24,455,000 dt.

Trunkline states that the transportation of natural gas for National Steel commenced January 16, 1990, as reported in Docket No. ST90-1829-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86-586-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP90-842-000]

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 772551-1642, filed in Docket No. CP90-842-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of National Steel Corporation (National Steel), under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on a firm basis, up to a maximum of 6,500 dt of natural gas per day for National Steel from receipt points located in Illinois, Louisiana, offshore Louisian, Tennessee, offshore Texas and Texas to delivery points located in Indiana. Trunkline anticipates transporting, on an average day 6,500 dt and an annual volume of 2,372,500 dt.

Trunkline states that the transportation of natural gas for National Steel commenced January 1, 1990, as reported in Docket No. ST90-1709-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86-586-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP86-17-012]

Taken notice that on February 13, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a petition in Docket No. CP86-17-012 to vacate in part a Commission order approving the transportation of gas for ten potential shippers, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIG states that the Commission order issued May 1, 1986, in Docket No. CP86-17-000 approved the transportation of gas for ten potential shippers, including the transportation of up to 25,000 Mcf per day for the account of Northern Natural Gas Company, Division of Enron Corp. (Northern) and up to 2,000 Mcf per day for the account of Cabot Transmission Corporation (Cabot). It is indicated that the transportation contracts between CIG and Northern and CIG and Cabot both expired on October 31, 1987. It is also indicated that no volumes of gas have been transported by CIG for either Northern and Cabot under the certificate authority which was not limited in term. CIG requests that the May 1, 1986, order be vacated insofar as it authorized the transportation service for Cabot and Northern.

Comment date: March 21, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP90-846-000]

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed a request for authorization in Docket No. CP90-846-000, pursuant to §§ 157.205 and 284.23 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Conoco, Inc. (Conoco), a producer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000, all as more fully set forth in the request on

file with the Commission and open to public inspection.

Specifically, Trunkline requests authority to transport up to 50,000 Dt. per day on an interruptible basis on behalf of Conoco pursuant to a transportation agreement dated November 3, 1989, between Trunkline and Conoco. The transportation agreement provides for Trunkline to receive gas from various existing points of receipt in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas. It is stated that Trunkline would then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Consumer Power Company in Elkhart County, Indiana.

Trunkline further states that the estimated daily and estimated annual quantities would be 1,700 Dt. and 620,500 Dt., respectively. Service under § 284.223(a) commenced on January 1, 1990, as reported in Docket No. ST90-1688-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filling should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the processing. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferrred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be respresented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days afte the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5499 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI89-102-001, et al.]

Women's Natural Gas Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission.

1. Women's Natural Gas Corporation

[Docket No. CI89-102-001]

March 1, 1990.

Take notice that on February 20, 1990, Women's Natural Gas Corporation (Women's) of Presidio Building, suite 380, 6907 Capital of Texas Highway, Austin, Texas 78731, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89-102-000 to include sales of imported gas, including liquified natural gas, and gas purchased from pipelines under interruptible discount sales programs, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 21, 1990 in accordance with Standard Paragraph J at the end of the notice.

2. Santanna Natural Gas Corporation

[Docket No. CI89-103-001]

March 1, 1990.

Take notice that on February 20, 1990, Santanna Natural Gas Corporation (Santanna) of Presido Building, Suite 332, 6907 Capital of Texas Highway, Austin, Texas 78731, filed an application pursuant to section 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89-103-000 to include sales of imported gas, including liquified natural gas, and gas purchased from pipelines under interruptible discount sales programs, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 21, 1990 in accordance with Standard Paragraph J at the end of the notice.

3. Northern Natural Gas Company

[Docket No. CP90-847-000]

March 2, 1990.

Take notice that on February 26, 1990, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-847-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Anadarko Trading Company (Anadarko), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern further states that the maximum daily, average and annual quantities that it would transport on behalf of Anadarko would be 10,000 MMBtu equivalent of natural gas, 7,500 MMBtu equivalent of natural gas and 3,650,000 MMBtu equivalent of natural gas, respectively.

Northern indicates in Docket No. ST90-1673, filed with the Commission on January 30, 1990, that transportation service on behalf of Anadarko commenced on January 2, 1990, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: April 16, 1990 in accordance with Standard Paragraph G at the end of the notice.

4. Mississippi River Transmission Corporation

[Docket No. CP90-857-000]

March 2, 1990.

Take notice that on February 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-857-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Unicorp Energy, Inc. (Unicorp), a marketer/broker, under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT states that pursuant to a transportation service agreement dated November 20, 1989, under its Rate Schedule ITS, it proposes to transport up to 28,500 MMBtu per day equivalent of natural gas for Unicorp. MRT states that it would transport the gas from receipt points located in Texas, Louisiana, Arkansas and Illinois, and would deliver the gas to delivery points located in Missouri and Illinois.

MRT advises that serviced under § 284.223(a) commenced January 12, 1990, as reported in Docket No. ST90-1796-000 (filed February 8, 1990). MRT further advises that it would transport 28,500 MMBtu on an average day and 10,402,500 MMBtu annually.

Comment date: April 16, 1990 in accordance with Standard Paragraph G at the end of the notice.

5. Northwest Pipeline Corporation

[Docket No. CP90-871-000]

March 2, 1990.

Take notice that on February 28, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-871-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phillips Petroleum Company (Phillips), a producer, under the blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 10, 1988, as amended, under its Rate ScheduleTI-1, it proposes to transport up to 150,000 MMBtu per day equivalent of natural gas for Phillips. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system.

Northwest advises that service under § 284.223(a) commenced February 1, 1990, as reported in Docket No. ST90-1993 (filed February 23, 1990). Northwest further advises that it would transport 50,000 MMBtu on an average day and 18,250,000 MMBtu annually.

Comment date: April 16, 1990 in accordance with Standard Paragraph G at the end of the notice.

6. Trunkline Gas Company

[Docket No. CP90-839-000]

March 2, 1990.

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-839-000 a request pursuant to section 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of V.H.C. Gas Systems, L.P. (V.H.C.), a marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport, on an interruptible basis, up to 200,000 dt equivalent of natural gas on a peak day for V.H.C., 200,000 dt equivalent on an average day, and 72,000,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas at designated receipt points in Ilinois, Tennessee, Louisiana, offshore Louisiana, Texas, and offshore Texas, and would deliver equivalent volumes, less fuel and unaccounted for line loss, to an interconnection with Tennessee Gas Pipeline Company at Centerville, St. Mary Parish, Louisiana. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced January 24, 1990, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1828.

Comment date: April 16, 1990 in accordance with Standard Paragraph G at the end of the notice.

7. Trunkline Gas Company

[Docket No. CP90-841-000]

March 2, 1990.

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-841-000 an application pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of ANR Gathering Company (ANR), under Trunkline's blanket certificate issued in Docket No. CP86-856-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport, on an interruptible basis, up to 100,000 Dt. equivalent of natural gas per day for ANR. Trunkline states that construction of facilities would not be required to provide the proposed service.

Trunkline further states that the maximum day, average day, and annual transportation volumes would be approximately 100,000 Dt. equivalent, 100,000 Dt. equivalent and 36,500,000 Dt. equivalent respectively.

Trunkline advises that service under § 284.223(a) commenced January 27, 1990, as reported in Docket No. ST90-1830.

Comment date: April 16, 1990 in accordance with Standard Paragraph G at the end of the notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-852-000]

March 2, 1990.

Take notice that on February 27, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-852-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Santa Fe Minerals, Inc. (Santa Fe), a producer, under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated November 10, 1989, under its Rate Schedule IT, it proposes to transport up to 1,625,000 dekatherms (dt) per day equivalent of natural gas from Santa Fe. Transco states that it would transport the gas

from receipt points located offshore Louisiana and offshore Texas, and would deliver the gas at delivery points onshore Louisiana.

Transco advises that service under § 284.223(a) commenced January 1, 1990, as reported in Docket No. ST90-1690. Transco further advises that it would transport 75,000 dt on an average day and 27,375,000 dt annually.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP90-844-000]

March 2, 1990.

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-844-000 a request pursuant to §§ 157.205(b) and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Panhandle Trading Company (PTC), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that the maximum daily, average daily and annual quantities that it would transport for PTC would be 25,000 dt equivalent of natural gas, 10,000 dt equivalent of natural gas and 3,650,000 dt equivalent of natural gas, respectively.

Trunkline states that it would transport natural gas for PTC from existing points of receipt in Illinois, Louisiana, Tennessee, Texas, offshore Texas, offshore Louisiana and from the Panhandle receipt point at Douglas County, Illinois to United Gas at Centerville in St. Mary Parish, Louisiana.

Trunkline indicates that in a filing made with the Commission in Docket ST90-1685, it reported that transportation service for PTC commenced on January 9, 1990 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP90-812-000]

March 2, 1990.

Take notice that on February 20, 1990, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP90-812-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct and operate under its blanket certificate authorization issued in Docket No. CP82-384-000, three sales taps and establish two new delivery points for the delivery of gas to Arkansas Louisiana Gas Company (ALG), also a division of Arkla, Inc., at specified locations in Arkansas, Oklahoma and Kansas, for resale to consumers, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, AER proposes to construct and operate a 3-inch tap, 4-inch dual meter run, and related facilities on AER's Line JM-16 in Greene County, Arkansas, for delivery of gas to ALG for resale to a power plant of the Paragould City Light and Water Commission, at an estimated cost of $74,256. AER also proposes to construct and operate three ¾-inch tap and related facilities for the delivery of gas to ALG for resale to domestic customers in Sumner County, Kansas, and Jackson and Roger Mills Counties, Oklahoma. Installation of each tap is estimated to cost $1,389. Further, AER seeks authorization to establish a new delivery point at existing facilities in Quachita County, Arkansas, for ALG's resale of gas to Arkansas Electric Cooperative Corporation. Lastly, AER seeks authority to establish and operate the Rimrock Town Border Station No. 2 at an existing point of delivery to ALG in Greer County, Oklahoma.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP90-855-000]

March 2, 1990.

Take notice that on February 28, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-855-000, a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate issued in Docket No. CP87-115-000, a maximum of 20,000 dt of natural gas for Miami Valley Resources, Inc. (Miami Valley), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee indicates that service commenced January 24, 1990, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST90-1958 and estimates the volumes transported to be 20,000 dt per day on peak day and average day, and 7,300,000 dt on an annual basis.

Tennessee states that it would transport gas for Miami Valley from receipt points located Offshore Louisiana and redeliver the natural gas to Columbia Gas Transmission Corporation (Columbia Gas) for transportation further downstream.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-851-000]

March 2, 1990.

Take notice that on February 27, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1296, Houston, Texas 77251, filed in Docket No. CP90-851-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Exxon Corporation (Shipper) under the blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it proposes to transport for Shipper 805,000 dt on a peak day, 125,000 dt on an average day, and 45,625,000 dt on an annual basis. Transco also states that it will receive the gas at various existing receipt points in onshore Mississippi, onshore Louisiana and onshore and offshore Texas. Transco will deliver the gas at various existing delivery points in onshore Louisiana and onshore Texas.

Transco further states that it commenced this service January 18, 1990, as reported in Docket No. ST90-1704-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Mississippi River Transmission Corporation

[Docket No. CP90-863-000]

March 2, 1990.

Take notice that on February 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-863-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on

behalf of Rangeline Corporation (Rangeline), under MRT's blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport, on an interruptible basis, up to 50,000 MMBtu of natural gas per day for Rangeline. MRT states that construction of facilities would not be required to provide the proposed service.

MRT further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 9,600 MMBtu and 3,504,000 MMBtu respectively.

MRT advises that service under § 284.223(a) commenced January 12, 1989, as reported in Docket No. ST90-1791.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. CNG Transmission Corporation

[Docket No. CP90-831-000]

March 2, 1990.

Take notice that on February 23, 1990, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP90-831-000, a request pursuant to section 7(b) of the Commission's Regulations for permission and approval to abandon standby service to Hope Gas, Inc. (Hope), one of CNG's local distribution company customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that Hope has notified CNG in accordance with its service agreement that it had elected to exercise its option of discontinuing standby service, effective January 1, 1989. CNG further states that recent Commission orders have clarified that CNG must receive abandonment authorization in order to discontinue standby service to a customer.

Comment date: March 23, 1990, in accordance with Standard Paragraph F at the end of this notice.

15. Mid Louisiana Gas Company

[Docket No. CP90-837-000]

March 2, 1990.

Take notice that on February 26, 1990, Mid Lousiana Gas Company (Mid Louisiana) Five Post Oak Park, Suite 800, Houston, Texas 77027 filed in Docket No. CP90-837-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Coastal Marketing Company (Coastal) under the authorization issued in Docket No. CP86-214-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Mid Louisiana would perform the proposed interruptible transportation service for Coastal, pursuant to a service agreement for transportation of natural gas dated September 25, 1989. The term of the transportation agreement is from September 1, 1989, and shall remain in full force and effect for one year and month-to-month thereafter. Mid Louisiana proposes to transport on a peak day up to 40,000 MMBtu per day; on an average day up to 40,000 MMBtu per day; and on an annual basis 14,600,000 MMBtu per day of natural gas for Coastal. Mid Louisiana states that it would receive the gas at various points of receipt in located on Eugene Island Block 18, offshore Louisiana, or at interconnections with Locust Ridge Gas Company in Pensas Parish, Louisiana, or ANR Pipeline Company in Franklin Parish, Louisiana, for transportation to points of delivery at interconnections with ANR Pipeline Company on Eugene Island Block 34, offshore Louisiana, or Mississippi River Transmission Corporation, Perryville, in Ouachita Parish, Louisiana. It is alleged that Coastal shall pay Mid Louisiana for all natural gas delivered in accordance with Mid Louisiana's Rate Schedule IT-1. Mid Louisiana avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Mid Louisiana commenced such self-implementing service on January 1, 1990, as reported in Docket No. ST90-1612-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. Trunkline Gas Company

[Docket No. CP90-840-000]

March 2, 1990.

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-840-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for V.H.C. Gas Systems, L.P. (V.H.C.), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated November 27, 1989, it proposes to receive up to 200,000 Mcf per day at specified points located in Illinois, Tennessee, and in onshore and offshore Texas and Louisiana and redeliver the gas into the facilities of Southern Natural Gas Company located in St. Mary's Parish, Louisiana. Trunkline estimates peak day and average day volumes of 200,000 dt equivalent of natural gas and annual volumes of 72,000,000 dt equivalent of natural gas. It is stated that on January 27, 1990, Trunkline initiated a 120-day transportation service for V.H.C. under § 284.223(a), as reported in Docket No. ST90-1825-000.

Trunkline states that no facilities need be constructed to implement the service. Trunkline states that the service should continue of a month-to-month basis until terminated by either Trunkline or V.H.C. upon at least thirty days prior notice. Trunkline proposes to charge rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Northern Natural Gas Company, Divsion of Enron Corp.

[Docket No. CP90-853-000]

March 2, 1990.

Take notice that on February 27, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), Post Office Box 1188, Houston, Texas 77252, filed in Docket No. CP90-853-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Panda Resources, Inc. (Panda), a natural gas marketer, under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Panda, pursuant to an interruptible transportation service agreement dated January 3, 1990. The transportation agreement is for a primary term of five years from the date of initial delivery

and month to month thereafter unless cancelled by thirty days prior notice by either party. Northern proposes to transport on a peak day up to 150,000 MMBtu per day; on an average day up to 112,500 MMBtu; and on an annual basis 54,750,000 MMBtu of natural gas for Panda. Northern proposes to receive the subject gas at various points located in the states of Iowa, Kansas, Minnesota, New Mexico, North Dakota, Oklahoma, Texas and Wisconsin. It is stated that the points of delivery are located in the states of Illinois, Iowa, Kansas, New Mexico, Oklahoma and Texas. Northern avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northern commenced such self-implementing service on January 4, 1990, as reported in Docket No. ST90-1675-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Columbia Gas Transmission Corporation

[Docket No. CP90-644-000]

March 2, 1990.

Take notice that on January 26, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application in Docket No. CP90-644-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by merger of the facilities and services of Commonwealth Gas Pipeline Corporation (Commonwealth) and the abandonment of authority associated therewith, all as more fully set forth in the application and open to public inspection.

Specifically, Columbia Gas requests authorization to:

(1) Acquire the natural gas transmission facilities of Commonwealth, an affiliate of Columbia Gas, by merger;

(2) Operate the natural gas transmission facilities so acquired from Commonwealth (which are now operated under a Hinshaw Exemption) in Columbia Gas Operations of transporting and making sales for resale of natural gas in interstate commerce;

(3) Continue liquefied natural gas (LNG) storage service to existing customers of Commonwealth under a new rate schedule similar to Commonwealth's Rate Schedule LNG at rates identical to those charged by Commonwealth under that rate schedule.

In addition, Columbia Gas requests authority to terminate Commonwealth's Hinshaw Exemption granted in Docket No. G-2500, and to abandon its blanket transportation certificate, issued in Docket No. CP89-657-000.

Columbia Gas states that this merger would permit it to integrate the facilities of Commonwealth into its existing system, thereby eliminating separate ownership of facilities and increasing efficient and effective utilization of resources. It is also indicated that integration of the two exsting systems would permit Columbia Gas to provide more economical service to its present customers now located on Commonwealth's facilities, and completes the process of making Commonwealth's present customers direct customers of Columbia, as authorized by the Commission's order approving Columbia Gas "Global Settlement" in Docket Nos. CP86-168-000, *et al.* Columbia Gas states that this acquisition has been approved by the boards of directors of both Columbia Gas and Commonwealth, and consent to the merger has been granted by The Columbia Gas Systems, Inc., the common stockholder of both companies. Columbia Gas further states that this merger is supported by the present customers of Commonwealth and by Columbia Gas existing customers.

Comment date: March 16, 1990, in accordance with Standard Paragraph F at the end of this notice.[1]

19. Southern Natural Gas Company

[Docket No. CP90-834-000]

March 2, 1990.

Take notice that on February 23, 1990, Southern Natural Gas Company (Southern Natural), P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP90-834-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Southeastern Clay Company (Southeastern) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern Natural would perform the proposed transportation service for Southeastern, an end-user of natural gas, pursuant to a service agreement under rate schedule IT dated December 19, 1989 (Service Agreement No. 852970). It is stated that the term of the service agreement is from December 19, 1989, for a primary term of one month and shall continue and remain in force and effect for successive terms of one month thereafter until cancelled by either party giving five days written notice to the other party. Southern Natural proposes to transport on a peak day up to 750 MMBtu; on an average day 250 MMBtu; and on an annual basis 91,250 MMBtu of natural gas for Southeastern. Southern Natural proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama for delivery to Southeastern's plant in South Carolina. Southern Natural asserts that no new facilities are required to implement the proposed service.

Southern Natural states that it would perform such transportation service for Southeastern pursuant to its Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern Natural commenced such self-implementing service on December 21, 1989, as reported in Docket No. ST90-1283-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Transwestern Pipeline Company

[Docket No. CP90-856-000]

March 2, 1990.

Take notice that on February 28, 1990, Transwestern Pipeline Company (Transwestern) P.O. Box 1188, Houston, Texas 77251-1188 filed in Docket No. CP90-856-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips Petroleum Company (Phillips), under the authorization issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern would perform the proposed interruptible transportation service for Phillips, a producer of natural gas, pursuant to a transportation service agreement under rate schedule ITS-1 dated December 18, 1990 (Transportation Service Agreement No. 8271). The term of the transportation agreement is for one year from the date of execution, and month to month thereafter unless terminated upon 30 days prior written notice to the other

[1] The notice was previously issued February 6, 1990, but inadvertently was not published in the Federal Register.

party. Transwestern proposes to transport on a peak day up to 5,000 MMBtu; on an average day up to 3,750 MMBtu; and on an annual basis 1,825,000 MMBtu of natural gas for Phillips. It is stated that unless Transwestern agrees in writing to a lower rate, Phillips shall pay Transwestern each month for transportation service at the maximum rates or charges in effect from time to time under Rate Schedule ITS-1, or any effective superseding rate schedule on file with the Commission. Transwestern proposes to receive the subject gas from various existing receipt points on its system for transportation to various existing delivery points on its system. Transwestern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Transwestern commenced such self-implementing service on January 4, 1990, as reported in Docket No. ST90-1657-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

21. Williams Natural Gas Company

[Docket No. CP90-868-000]

March 2, 1990.

Take notice that on February 28, 1990, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-868-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of GasTrak Corporation (GasTrak), a natural gas marketer, under its blanket authorization issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed firm transportation service for GasTrak, pursuant to a transportation service agreement dated January 15, 1990 (Reference No. TR-A0145). The transportation agreement is effective for a term until September 1, 1990. Williams proposes to transport approximately 500 dt of natural gas on a peak and average day; and on an annual basis 182,500 dt of natural gas for GasTrak. Williams proposes to receive the subject gas at various points located on its system in the states of Kansas, Oklahoma and Wyoming for delivery to various points on Williams' pipeline system located in the state of Kansas.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on January 23, 1990, as reported in Docket No. ST90-1978-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. Northern Natural Gas Company

[Docket No. CP90-848-000]

March 2, 1990.

Take notice that on February 26, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston Texas 77251-1188 filed in Docket No. CP90-848-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Conoco, Inc. (Conoco), under the authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Conoco, a producer of natural gas, pursuant to an interruptible transportation service agreement IT-1 rate Schedule dated January 1, 1990 (Transportation Agreement No. 75244). The term of the transportation agreement is for two years from the date of initial delivery, and month to month thereafter unless terminated upon 30 days prior written notice to the other party. Northern proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 37,500 MMBtu; and on an annual basis 18,250,000 MMBtu of natural gas for Conoco. It is stated that unless Northern agrees in writing to a lower rate, Conoco shall pay Northern each month for transportation service at a maximum rates or charges in effect from time to time under Rate Schedule IT-1, or any effective superseding rate schedule on file with the Commission. Northern proposes to receive the subject gas from various existing receipt points on its system for transportation to various existing delivery points on its system. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on January 1, 1990, as reported in Docket No. ST90-1511-000.

Comment date: April 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Mississippi River Transmission Corporation

[Docket No. CP90-878-000]

March 5, 1990.

Take notice that on March 1, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-878-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas) a marketer/broker, under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT states that pursuant to a transportation service agreement dated December 1, 1989, under its Rate Schedule ITS, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Tejas. MRT states that it would transport the gas from receipt points located in Louisiana, Texas, Arkansas and Illinois, and would deliver the gas to delivery points located in Louisiana, Texas, Arkansas, Missouri and Illinois.

MRT advises that service under § 284.223(a) commenced January 13, 1990, as reported in Docket No. ST90-1836-000 (filed February 12, 1990). MRT further advises that it would transport 100,000 MMBtu on an average day and 36,500,000 MMBtu annually.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

24. Mississippi River Transmission Corporation

[Docket No. CP90-861-000]

March 5, 1990.

Take notice that on February 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Rd., St. Louis, Missouri 63124, filed in Docket No. CP90-861-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to transport natural gas for The Polaris

Pipeline Corporation (Polaris), a marketer of natural gas, under MRT's blanket certificate issued in Docket No. CP89-1121-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport, on an interruptible basis, up to 20,000 MMBtu equivalent on a peak day for Polaris, 20,000 MMBtu equivalent on an average day and 7,300,000 MMBtu equivalent on an annual basis. It is stated that MRT would receive the gas at existing points on MRT's system in Oklahoma, Texas, Louisiana, Arkansas, and Illinois, and would deliver equivalent volumes at existing points on MRT's system located in Arkansas, Illinois, Louisiana, and Texas. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced January 12, 1990, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1795.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

25. United Gas Pipe Line Company

[Docket No. CP90-867-000]

March 5, 1990.

Take notice that on February 28, 1990, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP90-867-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on a firm basis for Fina Oil and Chemical Company (Fina). United explains that service commenced December 5, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-1798-000. United explains that the peak day quantity would be 61,800 MMBtu, the average daily quantity would be 61,800 MMBtu, and that the annual quantity would be 22,557,000 MMBtu. United explains that it would receive natural gas for Fina's account at various receipt points in the states of Louisiana, Texas, Mississippi and Offshore Louisiana. United states that it would redeliver the gas at delivery points in the states of Mississippi and Louisiana.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

26. Southern Natural Gas Company

[Docket No. CP90-650-000]

March 5, 1990.

Take notice that on February 26, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed a request with the Commission on Docket No. CP90-850-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible transportation service for Transworld Oil U.S.A., Inc. (Transworld), a natural gas marketer, under its blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Southern proposes an interruptible transportation service of up to 100,000 MMBtu equivalent of natural gas on peak days, 200 MMBtu equivalent on average days, and 73,000 MMBtu equivalent annually for Transworld. Southern states that it would transport Transworld's natural gas volumes under its Rate Schedule IT from various receipt points on its system in Alabama, Louisiana, offshore Louisiana, Mississippi, Texas, and offshore Texas to various Alabama delivery points. Southern also states that it commenced service for Transworld on December 28, 1989, as reported in Docket No. ST90-1452 pursuant to § 284,223(a) of the Regulations.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

27. Mississippi River Transmission

[Docket No. CP90-860-000]

March 5, 1990.

Take notice that on February 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-860-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of System Supply for End Users, Inc., D.B.A. End Users Supply System (System Supply), a marketer/broker of natural gas, under MRT's blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT requests authorization to transport, on an interruptible basis, up to a maximum of 40,000 MMBtu of natural gas per day for System Supply from receipt points located in Texas, Louisiana, Arkansas, and Illinois to delivery ponts located in Louisiana, Missouri, and Illinois. MRT anticipates transporting an annual volume of 10,950,000 MMBtu.

MRT states that the transportation of natural gas for System Supply commenced January 11, 1990, as reported in Docket No. ST90-1793-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to MRT in Docket No. CP89-1121-000.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

28. Mississippi River Transmission

[Docket No. CP90-875-000]

March 5, 1990.

Take notice that on March 1, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-875-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Mobil Natural Gas, Inc. (Mobil), a marketer/broker of natural gas, under MRT's blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport, on an interruptible basis, up to 50,000 MMBtu of natural gas equivalent per day for Mobil pursuant to a transportation agreement dated November 29, 1989, between MRT and Mobil. MRT would receive the gas at various existing receipt points in Texas, Louisiana, Arkansas, and Illinois and deliver equivalent volumes, less fuel used, at existing delivery points in Arkansas, Texas, Louisiana, Illinois, and Missouri.

MRT states that the estimated daily and annual volumes are 50,000 MMBtu and 18,250,000 MMBtu, respectively. Service under § 284.223(a) commenced on January 13, 1990, as reported in Docket No. ST90-1840-000, it is stated

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

29. Mississippi River Transmission

[Docket No. CP90-864-000]

March 5, 1990.

Take notice that on February 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-864-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for Seagull Marketing Services, Inc. (Seagull), a shipper, pursuant to MRT's blanket certificate issued in Docket No. CP88-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

MRT states that pursuant to a Transportation Service Agreement dated November 30, 1989, between MRT and Seagull, it would transport up to 200,000 MMBtu of natural gas per day for Seagull from receipt points located in the states of Texas, Louisiana, Arkansas, and Illinois to delivery points located in the states of Texas, Arkansas, Illinois, Louisiana, and Missouri. MRT estimates that it would transport 200,000 MMBtu on an average day and 73,000,000 MMBtu on an annual basis.

MRT indicates that it commenced the transportation of natural gas for Seagull on January 12, 1990, as reported in Docket No. ST90-1797-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

30. Mississippi River Transmission

[Docket No. CP90-865-000]

March 5, 1990.

Take notice that on February 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-865-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for Bishop Pipeline Corporation (Bishop), a shipper, pursuant to MRT's blanket certificate issued in Docket No. CP88-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

MRT states that pursuant to a Transportation Service Agreement dated December 4, 1989, between MRT and Bishop, it would transport up to 98,358 MMBtu of natural gas per day for Bishop from receipt points located in the states of Texas, Louisiana, Arkansas, Oklahoma, and Illinois to delivery points located in the states of Missouri and Illinois. MRT estimates that it would transport 98,358 MMBtu on an average day and 35,900,670 MMBtu on an annual basis.

MRT indicates that is commenced the transportation of natural gas for Bishop on January 11, 1990, as reported in Docket No. ST90-1790-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

31. Mississippi River Transmission Corporation

[Docket No. CP90-858-000]

March 5, 1990.

Take notice that on February 28, 1990, Mississippi River, Transmission (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed a request for authorization at Docket No. CP90-858-000, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service for Jefferson Smurfit Corporation, CCA (Jefferson Smurfit), a shipper and end user, under MRT's blanket certificate issued at Docket No. CP89-1121-000, all as more fully set forth in the request on file with the Commission and open for public inspection.

MRT proposes to transport, on an interruptible basis, up to a maximum of 10,500 MMBtu of natural gas per day for Jefferson Smurfit from receipt points located in the States of Texas, Louisiana, Arkansas and Illinois to delivery points located in the States of Missouri and Illinois. MRT states that Jefferson Smurfit estimates MRT would transport 2,055 MMBtu on an average day and 750,000 MMBtu on an annual basis.

MRT further states that transportation of natural gas for Jefferson Smurfit commenced on January 12, 1990, as reported in Docket No. ST90-1794-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

32. Mid Louisiana Gas Company

[Docket No. CP90-838-000]

March 5, 1990.

Take notice that on February 26, 1990, Mid Louisiana Gas Company (Mid Louisiana), Five Post Park, Suite 800, Houston, Texas 77027, filed in Docket No. CP90-838-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP86-214-000, a maximum of 20,000 MMBtu of natural gas for Texican Natural Gas Company (Texican), all as more fully set forth in the request on file with the Commission and open to public inspection.

Mid Louisiana indicates that service commenced January 1, 1990 under § 284.223 (a) of the Commission Regulations as reported in Docket No. ST90-1611-000 and estimates the volumes transported to be 20,000 MMBtu on a peak day and average day, and 7,300,000 MMBtu on an annual basis.

Mid Louisiana proposes to transport natural gas for Texican from points of receipt at various interconnections with Wintershall Pipeline Corporation in the Monroe Field, Quachita Parish, Louisiana, or to the Irene Plant in Baton Rouge Parish, Louisiana, to a point of delivery at an interconnection with Southern Natural Gas Company, Perryville, in Quachita Parish, Louisiana.

Mid Louisiana does not propose to construct any facilities to provide this service.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

33. Alabama-Tennessee Natural Gas Company and Sun Operating Limited Partnership

[Docket No.CP90-804-000]

March 5, 1990.

Take notice that on February 16, 1990, Alabama Tennessee-Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama, 35631, and Sun Operating Limited Partnership (SOLP), acting through its Managing General Partner, Oryx Energy Company (Oryx) P.O. Box 2880, Dallas, Texas 75221-2880, (Jointly, Petitioners), filed in Docket No. CP90-804-000 a joint petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that, upon the sale of certain facilities by A-T to SOLP, such facilities would be gathering facilities exempt from Commission jurisdiction under section 1(b) of the Natural Gas Act (NGA). Petitioners

state that A-T is also filing an application for abandonment of those facilities, which application is contingent upon a finding that, following the transfer to SOLP, the facilities will not be subject to the Commission's jurisdiction under the NGA.

It is stated that A-T currently owns a small gathering system in Lamar and Forrest Counties, Mississippi, the Tatum's Camp facilities, which is non-contiguous to its interstate pipeline. A-T states that the gathering system is used to obtain natural gas produced by SOLP from the Tatum's Camp Field, Lamar County, Mississippi. Petitioners state that any gas purchased from SOLP by A-T has been delivered into Tennessee Gas Pipeline Company's (Tennessee) pipeline at a point of interconnection with Tennessee's Delta-Portland Line located in Forrest County, Mississippi and is transported by Tennessee and delivered to A-T at existing delivery points.

A-T states that the Tatum's Camp facilities consist of: (a) Wellhead gas measurement equipment; (b) approximately one mile of two-inch and four-inch pipeline—extending from the Ross Beatty #1 and Ross Beatty 8-7 #2 wells (located in Tatum's Camp Field) to processing facilities located in Lamar County, Mississippi; (c) processing and purification facilities used to separate liquids and to remove carbon dioxide, sulfur and water from the gas stream; and (d) approximately 17 miles of eight-inch pipeline—extending from the outlet of the processing facilities to a point of interconnection with Tennessee's Delta-Portland line in Forrest County, Mississippi.

Petitioners state that A-T was authorized to construct and operate the Tatum's Camp facilities by order issued November 20, 1978 (5 FERC ¶ 61,123) in response to curtailment of deliveries by Tennessee. In view of the limited options then available to A-T (*i.e.*, no open access transportation), A-T states that it sought to construct the necessary gathering facilities to assure that additional interruptible gas supplies could be brought to its system. However, A-T states that the certificate never directly addressed the question of whether the facilities were jurisdictional.

It is stated that A-T has determined that it is now appropriate to sell the facilities to SOLP in light of changed circumstances since the Tatum's Camp facilities were constructed: *i.e.*, Tatum's Camp gas production is no longer contractually committed to A-T, Tennessee is no longer in curtailment and Tennessee's current open access transportation affords A-T and its customers other gas supply opportunities. Petitioners state that such a sale would be beneficial to all concerned; A-T's customers would be relieved of the cost of any further upgrading of the facilities which may be necessary as well as any furhter payment at all for such facilities. At the same time, it is stated that those customers and A-T would still have access to the Tatum's Camp gas via open access transportation. From SOLP's perspective, it is stated that the purchase of the facilities has attraction because SOLP has a compelling interest in marketing both the gas and the liquids from its Tatum's Camp wells.

Accordingly, Petitioners state that A-T and SOLP have entered into an agreement for the sale and purchase of the Tatum's Camp facilities. It is further stated that the sale is expressly conditioned upon a declaration by the Commission that the Tatum's Camp facilities, as owned by SOLP and operated by Oryx, would be gathering facilities exempt from Commission jurisdiction pursuant to section 1(b) of the NGA.

The Petitioners state that the facilities satisfy the "primary function" sets for gathering established by *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), because the primary function, indeed the only function, of this very simplistic system is to gather Tatum's Camp Field gas, and only Tatum's Camp Field gas, for subsequent transportation and market delivery by others.

It is stated that neither the Commission's 1978 certificate order, nor the application seeking that certificate, directly addressed whether the Tatum's Camp facilities were gathering and therefore exempt from Commission jurisdiction. The Petitioners states that in several other instances, the Commission has subsequently determined that certificated facilities were in fact non-jurisdictional gathering facilities.[1]

According to the Petitioners, the fact that the facilities, upon transfer to SOLP, would be owned and operated by an entity exclusively engaged in non-jurisdictional production and gathering of natural gas further supports a determination of non-jurisdiction. Finally, it is asserted that no regulatory gap would be created upon transfer of the facilities because all the gas gathered and processed is produced from the Tatum's Camp Field, and there would be no transportation for a third party.

Comment date: March 26, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

34. Anthem Energy Company (formerly Cabot Energy Marketing Corporation)

[Docket No. CI88-346-004]

March 5, 1990.

Take notice that on March 2, 1990, Anthem Energy Company (Anthem) of 333 Clay Street, Suite 2000, Houston, Texas 77002, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to extend for an unlimited term its blanket limited-term certificate with pregranted abandonment previously issued by the Commission in Docket No. CI88-346-002 for a term expiring March 31, 1990, and to amend its certificate to reflect its succession in interest to Cabot Energy Marketing Corporation as the result of a merger, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene.

Comment date: March 12, 1990 in accordance with Standard Paragraph J at the end of the notice.

35. Mississippi River Transmission

[Docket No. CP90-859-000]

March 5, 1990.

Take notice that on February 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-859-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Texaco Gas Marketing, Inc. (Texaco), a marketer, under MRT's blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport on an interruptible basis up to 200,000 MMBtu of natural gas on a peak day, 200,000 MMBtu on an average day, and 73,000,000 MMBtu on an annual basis for Texaco. MRT states that it would perform the transportation service for Texaco under MRT's Rate Schedule ITS.

[1] *See, eg, Tennessee Gas Pipeline Company*, 47 FERC ¶ 61,029 (1989); *Dorchester Gas Producing Company*, 32 FERC ¶ 61,409 (1985); *Productions Operators, Inc.*, 25 FERC ¶ 61,351 (1983).

MRT indicates that it would receive the gas at various points in Oklahoma, Texas, Louisiana, Arkansas, and Illinois, for delivery to various points in Illinois and Missouri.

It is explained that the service commenced January 12, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1788. MRT indicates that no new facilities would be necessary to provide the subject service.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

36. Mississippi River Transmission

[Docket No. CP90-877-000]

March 5, 1990.

Take notice that on March 1, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-877-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Unifield Natural Gas Group, L.P. (Unifield), a marketer, under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT states that pursuant to a transportation service agreement dated November 30, 1989, it proposes to receive up to fifty billion Btu of natural gas per day at specified points located in Texas, Illinois, Arkansas, and Louisiana and redeliver the gas to specified points located in Illinois and Missouri. MRT estimates that the peak day, average day, and annual volumes would be 50,000 million Btu, 24,658 million Btu, and 9,000,000 million Btu, respectively. It is indicated that on January 13, 1990, MRT initiated a 120-day transportation service for Unifield under § 284.223(a), as reported in Docket No. ST90-1834-000.

MRT further states that no facilities need be constructed to implement the service. MRT states that the primary term of the agreement would expire on November 30, 1994, but that the service would continue on a month-to-month basis until terminated on thirty day's written notice by either party. MRT proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: April 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

37. Tennessee Gas Pipeline Company

[Docket No. CP90-833-000]

March 5, 1990.

Take notice that on February 23, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-833-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service for Phillips Petroleum Company,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee avers that it was authorized to transport up to 15,000 Mcf of natural gas per month produced from the North Lake Washington Field in Plaquemines Parish, Louisiana, through Tennessee's existing facilities to the Bay St. Elaine Field in Terrebonne Parish, Louisiana, for gas lift operations.

It is further stated that effective December 1, 1987, Phillips sold its interest in the Bay St. Elaine Field. It is stated that on February 12, 1990, Phillips requested termination of the transportation service, to be effective March 1, 1990, or effective as of the Commission order allowing abandonment. Tennessee has agreed to terminate the agreement as of March 1, 1990. Tennessee's Rate Schedule T-117 would be cancelled, effective upon receipt of the abandonment authorization, it is stated. Tennessee further states that no facilities are proposed to be abandoned.

Comment date: March 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will

[1] Transportation service is rendered under the terms of a September 10, 1980, agreement between Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (presently known as Tennessee Gas), Southern Natural Gas Company, and Aminoil of Louisiana, Inc (Aminoil). Phillips purchased Aminoil and has succeeded to the rights and obligations of Aminoil.

be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5500 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-1-002]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

March 5, 1990.

Take notice that on February 28, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Replacement Nineteenth Revised Sheet No. 4

The tariff sheet is proposed to become effective January 1, 1990. Alabama-Tennessee states that the purpose of this filing is to restate its rates in compliance with the Commission's order issued on December 29, 1989 in Docket No. TA90-1-1-000. Alabama-Tennessee further states that the rates contained on that tariff sheet are unchanged from those which it previously filed in Docket No. TA90-1-1-000.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR sections 385.211 and 385.214). All such motions or protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 90-5506 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 5, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 1, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective May 1, 1990:

Second Revised Sheet No. 26
Second Revised Sheet No. 26A
Second Revised Sheet No. 26B
Second Revised Sheet No. 26C
Second Revised Sheet No. 163

Columbia states that the sales rate set forth on Second Revised Sheet No. 26 reflect an overall decrease of 56.61¢ per Dth in the Commodity rate, and an increase of $.300 per Dth in the Demand rate. In addition, the transporation rates set forth on Second Revised Sheet No. 26C reflect a decrease in the Fuel Charge component of .96¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) Unrecovered Purchase Gas Cost Surcharges to be effective during the 12-month period commencing May 1, 1990;

(3) A surcharge adjustment to provide for the recovery, over the 12-month period commencing May 1, 1990, of carrying charges related to take-or-pay reimbursements paid by Columbia to Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the terms of a Commission approved settlement in Docket No. RP83-5-000; and

(4) A Transportation Fuel Charge Adjustment.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1990. Protests will be considered by the Commission in determining the apporopriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 90-5507 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-88-000]

El Paso Natural Gas Co.; Tariff Filing

March 5, 1990.

Take notice that on March 1, 1990, El Paso Natural Gas Company ("El Paso") filed, pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, Eighteenth Revised Sheet No. 100-A to its FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that the tendered tariff sheet, when accepted by the Commission and permitted to become effective, serves to eliminate the Reserve for Exploration ("RFX") costs contained in the minimum rates under Rate Schedule IS-1 (Interruptible Sales), thereby reducing such minmum rates.

El Paso states that the RFX variable costs now contained in the minimum rates should be excluded for interruptible sales under Rate Schedule IS-1. The RFX properties were acquired and developed to make available system supply for firm sales customers. Since the RFX production is priced on a cost of service basis, the RFX costs are included in the non-gas cost component of El Paso's firm sales rates. Further, El Paso stated that the RFX properties are not scheduled to be produced by El Paso to make excess sales under Rate Schedule IS-1. Including the RFX variable costs in the minimum rate for interruptible sales unfairly impairs El Paso's ability to compete with other sellers for interruptible sales markets. Furthermore, one of the principal benefits resulting from a pipeline's interruptible sales program is alleviation of take-or-pay liability. RFX production is pipeline owned and, therefore, does not create any take-or-pay liability. There is no connection between the RFX production, which is scheduled to serve firm sales, and the mitigation of take-or-pay costs by interruptible sales. Therefore, the RFX variable costs should not be included in the Rate Schedule IS-1 minimum rates. Accordingly, El Paso proposes this filing to decrease the minimum rate under Rate Schedule IS-1 by $0.1512 per dth by eliminating the variable costs of the RFX properties.

El Paso requested that the tendered tariff sheet be accepted by the Commission and permitted to become effective on April 1, 1990, which is thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5503 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-42-000]

Transwestern Pipeline Co., Proposed Changes in FERC Gas Tariff

March 5, 1990.

Take notice that on February 28, 1990, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective March 1, 1990:

1st Revised Sheet No. 5M.

Transwestern states that the above referenced tariff sheet is being filed to implement the Commission's May 11, 1988, July 29, 1988, July 31, 1989, December 19, 1989 and December 29, 1989 Orders approving Transwestern's Gas Inventory Charge, and the direct billing (or refunding, as appropriate) of all amounts properly includable within Account No. 191 upon termination of Transwestern's Purchase Gas Adjustment mechanism on October 1, 1989.

Through its filing, Transwestern seeks to recover through the direct billing mechanism an additional amount of $3,141,900 including $51,620 of interest which has accrued during the period January 1, 1990 to February 28, 1990, as calculated in accordance with § 154.67(c)(2)(iii)(A) of the Commission's Regulations. The $3,141,900 million represents unrecovered amounts applicable to the period prior to October 1, 1989, plus the referenced interest. Under the direct billing mechanism, $3,000,661 represents Southern California Gas Company's proportionate share of the unrecovered amount, and $141,239 represents Williams Natural Gas Company's proportionate share of the under-recovered amount. The instant filing is the second filing to be made by Transwestern to direct bill Account No. 191 costs.

The proposed effective date for the tariff sheet listed above is March 1, 1990.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5504 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-86-000]

MIGC, Inc.; Proposed Changes in FERC Gas Tariff

March 5, 1990.

Take notice that MIGC, Inc. (MIGC), on March 1, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes are designed to increase MIGC's jurisdictional revenues by $2,903,539 based on the twelve months ending December 31, 1989, as adjusted for known and measurable changes for the period ending September 30, 1990. MIGC has proposed that the increased rates and tariff sheets become effective April 1, 1990.

MIGC states that the requested change in rates is to recover deficiencies experienced in its annual jurisdictional cost of service. MIGC notes that the principal reasons for the proposed rate changes are increased costs of labor, operation and maintenance expenses, working capital requirements, and taxes, as well as the decline in volumes connected to the MIGC system. MIGC is also proposing to eliminate its Purchased Gas Adjustment clause.

MIGC states that copies of this filing were served upon all of MIGC's jurisdictional customers, as well as interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5508 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-89-000]

Sea Robin Pipeline Co.; Filing

March 5, 1990.

Take notice that on March 1, 1990, Sea Robin Pipeline Company (Sea Robin) filed a request for waiver of the quarterly purchased gas adjustment (PGA) filing requirements of § 154.308 of the Commission's regulations until such time as the Commission acts on the Stipulation and Agreement in Docket Nos. RP88-181 *et al.* (Settlement).

In support of this request, Sea Robin states that it has received written notice from its only two sales customers, Southern Natural Gas (Southern) and United Gas Pipe Line (United), of their intent to cancel their sales contracts upon expiration of the primary terms of those contracts on March 31, 1990; that it has filed an application with the Commission to abandon its sales obligations to United and Southern pursuant to Rate Schedules X-1, X-2, X-7 and X-8, and for authorization for United and Southern to abandon purchases of gas from Sea Robin (Docket No. CP90-494, proposed effective date of April 1, 1990); that it

has projected no sales to its customers and therefore, cannot mathematically compute a gas cost unit rate for this reporting period under the unit of sales methodology.

Sea Robin further states that its Settlement provides for, among other things, authorization to discontinue its purchased gas adjustment clause, effective April 1, 1990, and disposition of the Account No. 191 balances for the period ending April 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before March 12, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5516 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-225-003]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 5, 1990.

Take notice that South Georgia Natural Gas Company ("South Georgia") on February 28, 1990, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1.

South Georgia states that on August 31, 1989, it filed a general rate increase in Docket No. RP89-225-000 to become effective on October 1, 1989. By its order issued September 29, 1989 (the "September 29 Order"), the Federal Energy Regulatory Commission ("Commission") accepted certain of the revised tariff sheets for filing, subject to refund and conditions, and suspended their effectiveness until March 1, 1990. Pursuant to the Commission's September 29 Order, South Georgia filed, under protest, revised tariff sheets on October 30, 1989 which reflected the reinstatement of the existing eligibility ceiling for sales service under Rate Schedule G-1, and the restoration of the standby service under South Georgia's G-1 and I-1 Rate Schedules. In addition, the revised tariff sheets reflected a restatement of South Georgia's accumulated depreciation reserve pursuant to the Stipulation and Agreement in Docket No. RP87-13-000 which was approved by the Commission on October 5, 1989.

On February 26, 1990, the Commission stated in its Order Granting Rehearing of its September 29 Order that it was not necessary for South Georgia to obtain certificate authorization in order to modify the eligibility threshold for sales service under Rate Schedule G-1. As a result, South Georgia notes that the instant filing reflects the same rates and conditions as were originally submitted by South Georgia on August 31, 1989, in Docket No. RP89-225-000 together with appropriate adjustments for the restatement of South Georgia's accumulated depreciation reserve and the current level of purchased gas costs as included in South Georgia's purchased gas adjustment filing of November 30, 1989 which became effective January 1, 1990. South Georgia states that it has not reflected the elimination of any costs associated with uncertificated facilities in the instant filing since all such facilities have been certificated and placed into service.

In view of the Commission's subsequent order on rehearing in this proceeding, South Georgia requests that the proposed tariff sheets be allowed to be substituted for the tariff sheets previously suspended by the Commission's September 29 Order. South Georgia asserts that since the proposed tariff sheets contain the same costs, terms and conditions originally included in South Georgia's rate filing in this proceeding, and have already been subjected to the maximum statutory suspension, no further suspension is appropriate or required. Consequently, South Georgia requests that the Commission grant such waivers as may be necessary to allow the proposed tariff sheets to become effective March 1, 1990.

Copies of this filing were served upon South Georgia's purchasers, shippers, interested state commissions, interested parties, and all parties of record.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All such petitions or protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5509 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-84-000]

Texas Sea Rim Pipeline, Inc.; Filing

March 5, 1990.

Take notice that on February 28, 1990, Texas Sea Rim Pipeline, Inc. (Sea Rim) filed certain tariff sheets to its FERC Gas Tariff, Original Volumes No. 1 and 2, to be effective April 1, 1989.

Sea Rim states that the tariff sheets in this filing reflect an increase in overall revenue of approximately $540,000 by increasing its rate for transportation service from 4.4 cents per MMBtu to 18.24 cents per MMBtu. Sea Rim states that this rate increase was necessitated by, among other things, an increase in the costs to operate and maintain its pipeline.

Sea Rim states that these tariff sheets reflect a change in the transportation rate as amendments to those tariff sheets submitted as a part of its blanket certificate filing in Docket No. CP88-454 on June 6, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5505 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 5, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 28, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Ninth Revised Sheet No. 68
Ninth Revised Sheet No. 69
Eighth Revised Sheet No. 70
Ninth Revised Sheet No. 71
Ninth Revised Sheet No. 72
Ninth Revised Sheet No. 73
Eighth Revised Sheet No. 74
Ninth Revised Sheet No. 75
Second Revised Sheet No. 483E
Second Revised Sheet No. 483F

Texas Eastern states that the purpose of this filing is to track modifications made by Texas Gas Transmission Corporation to fixed take-or-pay surcharges made on December 14, 1989 in Docket No. RP90-58 and January 15, 1990 in Docket No. TM89-5-18.

The proposed effective date of the tariff sheets listed above is March 1, 1990.

Copies of the filing were served on all Authorized Purchasers of Natural Gas from Texas Eastern and Interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5510 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

March 5, 1990.

Take Notice that on March 1, 1990, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets:

Second Revised Volume No. 1

Third Revised Sheet No. 4
Third Revised Sheet No. 4A
Third Revised Sheet No. 4B
Second Revised Sheet No. 4D
Third Revised Sheet No. 4I

The proposed effective date of the above referenced tariff sheets is April 1, 1990. The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in Section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United States that it has filed tariff sheets to reflect a 1.06¢ per Mcf overall decrease in gas commodity costs compared to the gas commodity cost level filed in Docket No. TQ90-1-11.

United further states that it has filed to abandon its sales contracts with Sea Robin Pipeline Company which expire March 31, 1990, and that United's D1 and D2 rates, therefore, have been reduced 31¢ per Mcf and .08¢ per Mcf, respectively, to reflect elimination of demand charges payable to Sea Robin.

United also states that it is electing to provide the required 30 days written notice to begin collecting the 18¢ per Mcf PGA Settlement Surcharge, applicable to United's Past Period Deferred Costs and Additional Deferred Costs Balances authorized by the Commission in Docket Nos. TA87-1-11-000 *et al.* and TA87-2-11-000 *et al.*, to be effective April 1, 1990.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before March 12, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5511 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-52-003]

Western Gas Interstate Co.; Compliance Filing

March 5, 1990.

Take notice that on February 28, 1990, Western Gas Interstate Company, 9130 Jollyville Road, Suite 150, Austin, Texas 78579, in compliance with the Commission Letter Order of January 29, 1990, submitted for filing tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff, with effective dates as follows:

First Revised Alternate Sixteenth Revised Sheet No. 10: 8/1/89
Second Revised Alternate Sixteenth Revised Sheet No. 10: 10/1/89
First Revised Substitute Seventeenth Revised Sheet No. 10: 11/1/89
First Revised Eighteenth Revised Sheet No. 10: 11/21/89
Nineteenth Revised Sheet No. 10: 2/1/90
First Revised Nineteenth Revised Sheet No. 10: 2/1/90

Western states that the filed tariff sheets provide for adjustments to its surcharge resulting from the Commission's denial of carrying charges incident to amounts in excess of the 103% ceiling threshold reflected in Western's July 31, 1989, annual PGA filing.

Western also states that, as more fully set forth in the transmittal letter, its compliance filing should be treated as a request for reconsideration of the Commission's denial of Western's surcharge including carrying charges on those amounts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before March 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5515 Filed 3-9-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1990. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used to calculate estimated annual operating costs of covered products.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective April 11, 1990, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: Part B of Title III of the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, the National Appliance Energy Conservation Act (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357,[1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer products specified in the Act. DOE has prescribed test procedures for the major household products listed in section 322(a) of the Act. These test procedures are found in 10 CFR part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products on December 7, 1988. (53 FR 49349). Effective April 11, 1990, the cost figures published on December 7, 1988, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1990 representative average unit costs of electricity, natural gas, and No. 2 heating oil found in this notice. These costs were taken from EIA's October 1989 *Short-Term Energy Outlook (Outlook)*, DOE/EIA-0202 (89/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices, and established trends in margins and operating expenses. The development of these costs is discussed in detail in the October 1989 issue of this report, which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 5 of EIA's *Outlook*. Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1F-048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8800.

In the cases of kerosene and propane, the 1990 representative average unit costs found in this notice were developed by other means since EIA's *Outlook* does not provide a forecast of the retail costs of these fuels. However, historical refiner prices for kerosene and propane are available from another EIA publication, *Petroleum Marketing Monthly* (PMM), DOE/EIA-0380. Referring to Table 2 of the July 1988 issue of the *PMM*, DOE obtained refiner average sales prices to end users for kerosene and propane for 1988. To forecast a 1990 representative average unit cost for kerosene, DOE made the assumption that the percentage change in 1990 from the 1988 annual average (last complete year of available data) for No. 2 heating oil prices to residential customers (which can be calculated from Table 5 of the *Outlook*) could be applied to kerosene. Propane prices were assumed to change at the same rate as the residential price of natural gas (which also can be calculated from Table 5 of the *Outlook*). Refiner prices to end users for kerosene and propane were used since, of the comparable recent data available, these are believed to be most representative of prices to residential consumers.

The 1990 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(4) of the Act and will become effective April 11, 1990. They will remain in effect until further notice.

Issued in Washington, DC, February 20, 1990.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

[1] Part B of Title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of EPCA, as amended by NECPA only, is referred to in this notice as NECPA.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1990)

Type of energy	In common terms	As required by test procedure	Dollar per million Btu [1]
Electricity	7.88¢/kWh [2,3]	$0.0788/kWh	$23.09
Natural gas	56.35¢/therm [4] or $5.81/MCF [5,6]	0.00000563/Btu	5.64
No. 2 heating oil	0.88/gallon [7]	0.00000634/Btu	6.35
Propane	0.76/gallon [8]	0.00000832/Btu	8.32
Kerosene	0.80/gallon [9]	0.00000593/Btu	5.93

[1] Btu stands for British thermal units

[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu
[4] 1 them=100,000 Btu
[5] MCF stands for 1,000 cubic feet
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,031 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 90-5601 Filed 3-9-90; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed Week of December 8 Through December 15, 1989

During the Week of December 8 though December 15, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 15, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 8 through December 15, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 11, 1989	Carlson-Thalen Oil Company, Wausau, WI	LEE-0008	Exception to the reporting requirements. If granted: Carlson-Thalen Oil, Company would not be required to file Form EIA-782B, "Reseller/Retailer Monthly Petroleum Products Sales Report".
Dec. 12, 1989	Robert E. Caddell, North Augusta, SC	LFA-0011	Appeal of an information request denial. If granted: The October 20, 1989 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and Robert E. Caddell would receive access to records on allegations that were made concerning him.
Dec. 15, 1989	Thurm & Heller, New York, NY	LFA-0012	Appeal of an information request denial. If granted: The November 7, 1989 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Thurm & Heller would receive access to numbered documents withheld in whole or in part as set forth in the Department of Energy correspondence.

REFUND APPLICATIONS RECEIVED

[Week of December 8 Through December 15, 1989]

Date	Name of refund proceeding/Name of refund applicant	Case No.
12/8/89 thru 12/15/89	Shell oil refund, applications received	RF315-9656 thru RF315-9677
12/8/89 thru 12/15/89	Atlantic Richfield refund, applications received	RF304-10902 thru RF304-10961
12/11/89	Ralph Caruso	RF307-10080
12/11/89	Burton R. Davis	RC272-75
12/11/89	Dana Corporation	RF300-10905
12/11/89	Len's Mobil Mart	RF272-78410
12/11/89	William D. Allsbrook	RF307-10081
12/13/89	Montrose Exxon	RF307-10083
12/14/89	Harlan Hartley	RA272-18
12/14/89	Charter/California	RQ23-543
12/14/89	St. James Catholic Church	RF272-78411
12/15/89	Belridge/Pennsylvania	RQ8-544
12/15/89	McCoy Flying Service	RF307-10082

[FR Doc. 90-5603 Filed 3-9-90; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed Week of January 19 Through January 26, 1990

During the Week of January 19 through January 26, 1990, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, and person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 19 through January 26, 1990]

Date	Name and location of applicant	Case No.	Type of submission
January 19, 1990	Coast Gas, Inc., Hardin, KY	PR272-41	Modification/rescission in the Crude Oil refund proceeding. If granted: The January 3, 1990 Decision and Order (Case No. RF272-75549) issued to Coast Gas, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
January 19, 1990	Solar Gas, Inc., Hardin, KY	PR272-42	Request for modification/rescission in the Crude Oil refund proceeding. If granted: The January 3, 1990 Decision and Order (Case No. RF272-75559) issued to Solar Gas, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
January 22, 1990	Gulf/C&G Gulf, Hardin, KY	PR300-4	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 21, 1989 Decision and Order (RF300-54) issued to C&G Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
January 22, 1990	Doris Tighe Coe, Santa Fe, NM	LFA-0025	Appeal of an information request denial. If granted: Doris Tighe Coe would receive access to all information deleted from the copies of documents she has received.
January 23, 1990	Haddon, Morgan & Foreman, P.C., Denver, CO	LFA-0026	Appeal of an information request denial. If granted: The January 4, 1990 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Haddon, Morgan & Foreman would receive access to a document seized by the Federal Bureau of Investigation from Rocky Flats.
January 25, 1990	A-R Fuels, Inc., Washington, DC	PR272-44	Request for modification/rescission in the Crude Oil refund proceeding. If granted: The January 4, 1990 Decision and Order (Case No. RF272-419800) issued to A-R Fuels, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
January 25, 1990	Schuchart Petroleum Company, Washington, DC	RR272-43	Request for modification/rescission in the Crude Oil refund proceeding. If granted: The January 1, 1990 Decision and Order (Case No. RF272-49800) issued to Schuchart Petroleum Company would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
January 25, 1990	Kenneth Paul Krupp, Minneapolis, MN	LFA-0027	Appeal of an information request denial. If granted: The November 24, 1989 Freedom of Information Request Denial would be rescinded, and Kenneth Paul Krupp would receive access to DOE information.
January 26, 1990	Traco Petroleum Company and John A. Mills, Jr., Washington, DC.	LEF-0008	Implementation of special refund procedures. If granted: The Office of Hearings & Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with October 2, 1989 Consent Order entered into with Traco Petroleum Company and John A. Mills, Jr.
January 26, 1990	Franc Pajek Company, Walnut Creek, CA	LFA-0028	Appeal of an information request denial. If granted: The January 9, 1990 Decision and Order issued by the Office of Hearings and Appeals would be modified and the Franc Pajek Company would receive access to certain information.
Janaury 26, 1990	Gulf/Hind's General Gulf, Jackson, MS	RR300-5	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 20, 1989 decision (Case No. RF300-10672 issued to Hind's General Gulf would be reconsidered regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
10/25/88	Mercury Aircraft, Inc.	RF272-78442
1/19/90	Joseph Falcon Gulf	RF300-10961
1/19/90	Kirbyville C.I.S.D.	RF272-78436
1/19/90	Eliett's Arco	RF304-11154
1/19/90 thru 1/26/90.	Atlantic Richfield refund, application received.	RF304-11154 thru RF304-11170
1/19/90 thru 1/26/90.	Gulf Oil refund, application received.	RF300-10962 thru RF300-10968
1/22/90	Rob's Carwash	RF304-11163
1/22/90	Grossmont Center Shell	RF315-9789
1/22/90	Dun-Roamin Shell	RF315-9790

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
1/22/90	Westhampton Shell	RF315-9791
1/22/90	North Lake Gulf	RF300-10962
1/22/90	Miles Gulf	RF300-10963
1/22/90	Luther Terry Gulf	RF300-10964
1/22/90	Mac's Gulf	RF300-10965
1/22/90	Fortson Gulf	RF300-10966
1/22/90	Reuben Thompson	RF272-78437
1/22/90	Harold Schuldheisz	RF272-78439
1/22/90	DeCrescenzo's Arco	RF304-11155

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
1/22/90	Nabeeth Arco	RF304-11156
1/22/90	Nabeeth Benyameen Arco.	RF304-11157
122/90	Rex Fred's Arco	RF304-11158
1/22/90	Santa Venetia Arco	RF304-11159
1/22/90	Ross Valley Arco	RF304-11160
1/22/90	Al's Arco	RF304-11161
1/23/90	City of Jefferson	RF272-78440
1/24/90	USX Corporation	RF272-78441
1/24/90	Toler's Grocery	RF265-2833
1/24/90	Ohmer Bassford	RC272-76

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
1/24/90	Carl's Spur	RF300-1385
1/24/90	Haynie's Crown	RF313-318

[FR Doc. 90-5604 Filed 3-7-90; 8:45 am]

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Issuance of Decisions and Orders by the Office of Hearings and Appeals

During the week of December 4 through December 8, 1989, the decisions and order summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals and the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Anamax Corporation, 12/05/89, RF272-7226

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Anamax Corporation (Anamax) for its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Anamax was an end-user of the petroleum products, which were to fuel its trucks. The firm was therefore presumed to have been injured. The refund granted in this Decision is $3,672.

Atlantic Richfield Company/Ardire's Atlantic, Don & Bill's Arco, 12/06/89, RF304-10781, RF304-10782

The DOE issued a Supplemental Order correcting refunds granted in the Atlantic Richfield Company special refund proceeding to Ardire's Atlantic and Don & Bill Arco. The DOE concluded that Ardire's should receive a refund of $1,080 and Don & Bill's should receive $194.

Atlantic Richfield Company/Bob's Kenmore Arco et al., 12/04/89, RF304-8770 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by Federal Refunds, Inc., in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $20,652, including $5,251 in accrued interest.

Atlantic Richfield Company/Genesee Automative Sales et al., 12/06/89, RF304-1251 et al.

DOE issued a Decision and Order concerning 20 Applications for Refund filed by resellers and retailers of refined petroleum products that where covered by a Consent Order that the DOE entered into with Atlantic Richfield Company. Each of the applicants submitted information indicating its volume of purchases from ARCO during the consent order period. Each claimant elected to limit its claim(s) on the basis of the 41% presumption of injury methodology. The sum of the refunds approved in this Decision is $197,716, representing $147,103 in principal and $50,613 in accrued interest.

Atlantic Richfield Company/Scullin Oil Company, 12/07/89, RF304-2105

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Scullin Oil Company, a reseller/retailer requesting a principal refund of less than $5,000. The refund granted in this Decision including $4,505 in principal and $1,536 in accrued interest.

Atlantic Richfield Company/T. Tannous & N. Sahlani et al., 12/04/89, RF304-6298 et al.

The DOE issued a Decision and Order concerning twenty-five Applications for Refund filed by purchasers of refined petroleum products covered by a Consent Order that the DOE entered into with Atlantic Richfield Company. Each application was approved based either on the $5,000 small claims presumption of injury or on the end-user presumption of injury. The sum of the refunds approved in this Decision is $52,157, representing $38,894 in principal and $13,263 in accrued interest.

Atlantic Richfield Company/Texas Eastman Company/Utility Trailer Sales Co., 12/07/89, RF304-7863, RF304-7898

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Atlantic Richfield Company special refund proceeding by end-users of ARCO products. The refunds granted in this Decision totalled $248,668, including $185,443 in principal and $63,225 in accrued interest.

Atlantic Richfield Company/UCO Tank Lines (UCO, Inc.), UCO Tank Lines (UCO, Inc.), UCO Oil Co. (UCO, Inc.), UCO Oil Co. (Landsea Oil Co.), 12/05/89, RF304-8361, RF304-8384, RF304-8385, RF304-8886

The DOE issued a Decision and Order concerning Applications for Refund filed on UCO, Inc. and Landsea Oil Co. in the Atlantic Richfield Company (ARCO) special refund proceeding. Because UCO, Inc. had sold all of its common and preferred stock in UCO Tank Lines and UCO Oil Company to Landsea Oil Company, Landsea was found to be the proper recipient of a refund for refined petroleum products purchased from ARCO during the Consent Order period. Landsea's refund was based on the 41 percent injury presumption and the refund approved was $9,479, including interest.

City of Omaha/City of Philadelphia, 12/04/89, RF272-8876, RF272-9897, RF272-56293

The DOE issued a Decision and Order concerning three Applications for subpart V crude oil overcharge refunds submitted by the City of Omaha and the City of Philadelphia. The Decision found that the Applicants had waived their rights to subpart V crude oil refunds by participating in the Stripper Well agreement as claimants in the Refiners' Escrow. Accordingly, the Applications submitted by Omaha and Philadelphia were denied.

Exxon Corporation/H.H.H. Inc. et al, 12/05/89, RF307-4606 et al.

The DOE issued a Decision and Order concerning 87 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a direct purchaser of Exxon products and was a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $73,880 ($59,390 principal plus $14,490 interest).

Exxon Corporation/Satterly 5 Point Service Station et al., 12/05/89, RF307-4642 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased indirectly from Exxon, and was supplied by a firm that either (i) did not apply for an Exxon refund, (ii) had been granted an Exxon refund under a presumption of injury, or (iii) indicated in its Exxon refund application that it did not intend to make a showing of injury. The claims of the applicants were therefore considered under the procedures used to evaluate direct purchase claims. Each applicant was either a reseller whose allocable share is less than $5,000 or an

end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,339 ($6,703 principal plus $1,636 interest).

Exxon Corporation/Yorkston Oil Co., Inc. et al., 12/05/89, RF307-4713 et al.

The DOE issued a Decision and Order granting a refund to 12 resellers of refined petroleum products from consent order funds collected from Exxon Corporation. Because each firm chose to limit its refund claim to the greater of $5,000 or 40 percent of its volumetric refund amount, each firm was presumed to have been injured by Exxon's alleged overcharges. The 12 applicants received refunds totalling $75,446 ($60,639 principal and $14,807 interest).

Farmers Oil Corporation, 12/04/89, RF272-44000

The DOE issued a Decision and Order granting the Application for Refund in the subpart V crude oil overcharge refund proceeding filed by a rural cooperative that sold 25 percent of its total purchases to non-members. Since it did not show injury with respect to that percentage of its purchases, it was not eligible for a refund for those volumes. Accordingly the applicant was granted a refund for the 75 percent of its purchases sold to its members. Farmers indicated that these funds would be disbursed to its members. The refund granted was $11,994.

Getty Oil Company/Grabenstein Service, 12/04/89, RF265-2841, RF265-2863

Grabenstein Service filed Applications for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. The firm documented its purchases of Getty motor gasoline and middle distilate which it acquired indirectly though the Detlefsen Oil Company, a Getty jobber. Detlefsen had previously received a refund in the Getty proceeding. The DOE found that since Detlefsen was not found to have absorbed 100 percent of the Getty overcharges, Grabenstein was entitled to a refund under the small claims injury presumption. The total refund granted as $4,868, representing $2,342 in principal and $2,526 in accrued interest.

Getty Oil Company/Huber's 4 Corners Store, 12/06/89, RF265-2848, RF265-2866

The DOE issued a Decision and Order to Huber's 4 Corners Store regarding indirect purchases of motor gasoline and middle distillates covered by a consent order with the Getty Oil Company. Huber's documented the volumes which it purchased from Farstad Oil, a Getty jobber. Since Farstad was not found to have absorbed 100 percent of the Getty overcharges, Huber's was entitled to a refund under the small claims injury presumption. The refund totaled $1,258, representing $605 in principal and $653 in interest.

Gulf Oil Corporation/Armour Oil Company, 12/04/89, RF 300-10387

The DOE issued a Decision and Order concerning an Application for Refund submitted by Armour Oil Company (Armour), in the Gulf Oil Corporation special refund proceeding. Armour's application was approved using the 40 percent presumption of injury. The total refund granted in this Decision, including accrued interest, is $67,969.

Gulf Oil Corporation/Don E. Hemsworth et al., 12/04/89, RF 300-10479 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $21,288.

Gulf Oil Corporation/Meredith & Tate Co, Inc. et al., 12/06/89, RF 300-5752 et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $39,740.

Gulf Oil Corporation/Osceola County Centennial et al., 12/06/89, RF 300-9071 et al.

The DOE issued a Decision and Order concerning 7 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $14,059.

Gulf Oil Corporation//Southern States Cooperative, Inc., 12/04/89, RF 300-9808 et al.

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Southern States Cooperatives, Inc., a cooperative that made purchases of Gulf Petroleum products which is resold to both cooperative members and to the general public. The OHA applied the mid-range presumption of 40 percent to the gallons of Gulf product which Southern States resold to the general public and the end-user/cooperative presumption to the gallons of Gulf product resold to cooperative members. The total refund granted in this Decision, including accrued interest, is $22,245.

Gulf Oil Corporation/Suburban Propane Gas Corporation, 12/04/89, RF300-10509

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Suburban Propane Gas Corporation. The application was approved under the 40 percent presumption of injury. The refund granted in this Decision, including interest, is $48,013.

Gulf Oil Corporation/Utilgas Service Company et al., 12/05/89, RF300-9705 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $82,041.

Gulf Oil Corporation/Yearwood Distributing Company, Inc. et al., 12/06/89, RF300-9094 et al.

The DOE issued a Decision and Order concerning 5 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $58,243.

Gulf Oil Corporation/Zero Butane Gas, Inc. Lyles L-P Gas Company, 12/06/89, RF300-10249, RF300-10272

The DOE issued a Decision and Order concerning two Applications for Refund submitted by Zero Butane Gas, Inc. (Zero) and Lyles L-P Gas Company (Lyles) in the Gulf Oil Corporation special refund proceeding. Both Zero and Lyles established that they purchased their Gulf products indirectly from Dixie Gas, Inc. (Dixie), a reseller of Gulf petroleum products. Dixie received a refund in the Gulf proceeding under the 40 percent injury presumption. The Zero and Lyles applications were approved using the small claims presumption of injury. The sum of the refunds granted in this Decision is $3,475.

Ingersall-Rand Co. et al., 12/04/89, RF272-13170 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed in the subpart V crude oil overcharge refund proceeding by four manufacturers that were end-users of refined petroleum products. The DOE found no support for the contentions of a group of States and Territories that the applicant had passed through the crude oil overcharges. Accordingly, the DOE decided that the applicants were entitled to rely on the end-user presumption of injury. The total refund granted was $68,237.

Kawasaki Kisen Kaisha Ltd., 12/4/89, RF272-0266

Kawasaki Kisen Kaisha Ltd. (Kawasaki), a foreign flagship carrier, filed an Application for Refund from the subpart V crude oil overcharge monies based upon its purchases of marine bunker fuel consumed by it vessels for propulsion. A group of thirty States and two Territories of the United States (collectively "the States") filed objections opposing the receipt of refunds by Kawasaki, on the basis that: (1) Bunker fuel sales to foreign ocean carriers were "export sales," exempt from price controls and (2) thee carriers were not injured by crude oil overcharges since they conventionally added bunker fuel surcharges to their shipping rates by means of industry regulation, and also joined in ratemaking conferences which facilitated the passthrough of increased fuel costs. The DOE determined that Kawasaki was an end-user that was presumptively injured by its purchases, and rejected the States' objections based upon determinations reached in *Christian Haaland A/S,* 19 DOE ¶ 85,191 (1989). Accordingly, Kawasaki's Application for Refund was granted. The refund approved in this Decision was $624,362

Murphy Oil Corporation/Spahr's Spur Service Avondale Spur Service, 12/05/89, RF309-1355, RF309-1357

The DOE issued a Decision and Order dismissing the refund applications filed by the Metairie, Louisiana, branch of Marcoin Business Service (Marcoin) on behalf of Spahr's Spur Service and Avondale Spur Service. The DOE found that these applications were apparently not authorized by the applicants, but that each applicant's name was nonetheless signed by Marcoin's former branch manager. The DOE further found that no supporting data was provided for the gallonage figures on Marcoin's submissions. The DOE pointed out that these practices are in violation of 10 U.S.C. 205.3(b), but determined that no sanctions involving Marcoin's right to represent applicants in refund proceedings would be imposed on Marcoin at this time.

Placid Oil Company/Delta Oil Co. Inc., et al, 12/06/89, RF314-4 et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted by resellers of Placid products in the Placid Oil Company special refund proceeding. The applicantions were approved using a presumption of injury. The sum of the refunds granted is $5,211.

Premark International, Inc., 12/05/89, RF272-8625, RD272-8625

The DOE issued a Decision and Order considering an Application for Refund filed by Premark International, Inc. in the subpart V crude oil proceedings. The DOE found no support for the contentions of a group of States and Territories that the applicant had passed through the crude oil overcharges. The DOE granted Premark a refund of $85,826 based on its purchases of No. 2, No. 4 and No. 6 fuel oils, propane, butane, motor gasoline and diesel fuel during the period August 19, 1973 through January 27, 1981. The DOE denied the firm's claim for a refund based on its purchases of polyolefin resins and phenolic resins, finding that these products were neither covered by the petroleum price regulations nor refined in a crude oil refinery.

Shell Oil Company/Pamela Sue Regan, 12/06/89, RF315-7896

The DOE issued a Decision and Order rescinding the refund granted in Excelsior Auto Electric Shell *et al.* to Pamela Sue Regan, because her check was returned to the comptroller as undeliverable and repeated efforts to ascertain her correct address were unsuccessful.

Shell Oil Company/Port of Tacoma Shell et al., 12/05/89, RF315-7701 et al.

The DOE issued a Decision and Order granting 84 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller who allocable share was less than $5,000 or an end-user of Shell products. The total refund granted was $80,135, including interest.

Total Petroleum/By Lo Oil Company, 12/05/89, RF310-215

The DOE issued a Decision and Order concerning an Application for Refund filed by By Lo Oil Company, in which the firm sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Based upon the injury documentation submitted by By Lo, the DOE granted the firm its full volumetric allocation share of the settlement fund for its purchases of Total motor gasoline during the consent order period. However, the DOE rejected that portion of By Lo's refund claim which arose from its purchase of Total No. 2 oils, because By Lo failed to support its claim with injury documentation. The DOE granted By Lo a refund of $12,989 ($10,811 principal and $2,278 interest).

Vickers Energy Corp./Oklahoma, 12/05/89, RQ1-541

The DOE issued a Decision and Order granting the second-stage refund application filed by the State of Oklahoma in the Vickers Energy Corporation special refund proceeding. Oklahoma requested a total of $45,000 to provide transportation to social and medical service agencies for low income persons in Norman, Oklahoma. The DOE found the plan to be restitutionary because it will expand the area served by the existing transportation network.

West Shore Construction Co. Inc. Heide Construction Co., Inc. Kuhlman Construction Company, 12/04/89, RF272-44320, RF272-44517, RF272-46852

The DOE issued a Decision and Order granting Applications for Refund filed in the crude oil overcharge refund proceeding by three construction companies that were end-users of petroleum products. The total refund granted was $13,395.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decision and Orders:

Name	Case No.	Date
Exxon Corp./Budd's Exxon *et al.*	RF307-68	12/07/89
Gulf Oil Corp./Bottini Fuel Corp.	FR300-4270	12/07/89

Dismissals

Name	Case No.
Alumax Aluminum	RF310-273
Alumax Extrustions, Inc	RF310-278
Alumax Fabricated Products Inc	RF310-277
Baldwin Total Kwick Mart	RF310-45
Boonstra Oil Co., Inc	RF310-294
Capitol Service Station #1	RF300-9657
Capitol Service Station #2	RF300-9656
Clares Total	RF310-39
Combined Oil Co., Inc	RF310-272
Corkys Total	RF310-63
Corner Grocery	RF300-7625
Dales Total Service	RF310-66
Depot Discount	RF310-28
Dept. of the Air Force	RF307-9210

Dinosaur Shell	RF315-4953
Dwights APCO	RF310-70
Eugene Funk Trucking	RF310-276
Hayes Gulf Station	RF300-7701
Healdton Oil Co., Inc	RF310-263
Kanowsky Manufacturing Inc	RF310-274
Knox Oil of Texas, Inc	RF300-10400
	RF300-10402
	RF300-10403
	RF300-10404
	RF300-10406
Lanes Gocery & Gas	RF310-302
Lily Truck Leasing	RF300-9638
Midwest Specialized Transport	RF310-316
Montgomery Ward & Co., Inc	RF304-5493
	RF304-5521
	RF304-5790
	RF304-5911
	RF304-5930
	RF304-6068
	RF304-6569
	RF304-6704
	RF304-7003
Mrs. Floyd F. Smith	RF307-9651
N&S Trucking, Inc	RF300-9875
Pankin APCO Service	RF310-53
Pol Lab Supply Services Division, DIO.	RF307-2576
Roby's APCO	RF310-23
Rogers Self Serve	RF310-292
Scruggs Mobil	RF300-7114
Siepkes Service	RF310-13
Terry's APCO	RF310-24
Troy's APCO	RF310-18
Umthum Trucking Co	RF310-275
United Petroleum Corp	RF310-82
United States Air Force	RF307-2671
Walkerville Total Kwick Mart	RF310-46
Webb Oil Company	RF310-42
Wells Oil Co	RF310-281
Wingfield's Gulf	RF300-491
4 Sons Handy Shops	RF310-291

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-5602 Filed 3-9-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearing and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $120,000,000 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Texaco, Inc. of Houston, TX (Case No. KEF 0119). The fund will be available to customers who purchased refined petroleum products from Texaco during the period March 6, 1973 through January 27, 1981.

DATES AND ADDRESSES: Applications for Refund of a portion of the consent order must be filed in duplicate no later than February 28, 1991 and should be addressed to: Texaco Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0119.

FOR FURTHER INFORMATION CONTACT: Texaco Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2456.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision an Order relates to a consent order entered into by the DOE and Texaco Inc. of Houston, Texas. The consent order settled allegations that Texaco had violated the Federal petroleum price and allocation regulations during the period January 1, 1973 through January 27, 1981. On March 24, 1989, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 54 FR 13420 (April 3, 1989). Comments were reviewed, and a public hearing was held on June 27, 1989.

As the Decision and Order indicates, Applications for Refund from the portion of the consent order fund available to purchasers of Texaco refined products may now be filed. Appications will be accepted provided that they are filed no later than February 28, 1991. Applications will be accepted from customers who purchased refined petroleum products from Texaco during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: March 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF OF ENERGY

Implementation of Special Refund Procedures

March 5, 1990.

Name of Case: Texaco Inc.

Date of Filing: September 28, 1988.

Case Number: KEF-0119.

In this determination, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the formal opening of the Texaco Inc. (Texaco) refund claims proceeding. Refund applications may now be filed. The procedures, rules and presumptions for different types of claimants are set forth in the text of this Decision, and parties are advised to read carefully any sections relevant to them. Claims will be accepted until February 28, 1991. Refunds will be paid while the filing period is open, so it is to the advantage of claimants to file as soon as possible.

On September 28, 1988, the DOE's Economic Regulatory Administration (ERA) filed with the OHA a Petition for the Implementation of Special Refund Procedures to distribute funds received from Texaco under the terms of a consent order between the DOE and Texaco. In accordance with the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were settled by the Texaco consent order. On March 24, 1989, the OHA issued a Proposed Decision and Order (PDO) which tentatively set forth procedures for disbursement of the Texaco consent order fund. 54 FR 13420 (April 3, 1989). We provided for a 30-day period for the submission of comments regarding the proposed procedures. In submission, at the suggestions of a number of the commentors, on June 27, 1989 we held a public hearing to further consider issues raised in the written comments. The present Decision will address comments received and will set forth final procedures for distribution of the Texaco refined products pool.[1]

Part I below summarizes the tentative procedures set forth in the PDO for distributing the Texaco refined product pool. Part II reviews and considers the comments we received regarding those procedures. Part III sets forth the final refund procedures applicable to parties claiming refunds based upon Texaco's alleged violations of the regulations pertaining to the pricing and allocation of refined petroleum products. The Appendices to this Decision consist of a suggested application form that refund applicants may use (appendix A), a copy

[1] On July 25, 1989, we issued a Decision and Order establishing procedures for the distribution of that portion of the Texaco funds which we determined should be allocated to crude oil claims. *See Texaco Inc.*, 19 DOE ¶ 85,200 (1989), *modified*, 19 DOE ¶ 85,236 (1989) (*Texaco*).

of the OHA Information Sheet (Appendix B) and a list of firms that are or were owned wholly or partly by Texaco and are therefore presumed ineligible for a refund in this proceeding (Appendix C).

I. Summary of the Proposed Texaco Refund Procedures

The procedures we proposed, which were based largely on our extensive experience on administering similar refund proceedings, have largely been agreed to by commentors and we will adopt them here. Where we have decided to change them, our reasons will be explained in detail. *See infra,* Part II.

Texaco is a major integrated refiner which produced and sold crude oil and full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR parts 210, 211 and 212 and the predecessor regulations at 6 CFR part 150. The ERA conducted extensive audits of Texaco's operations during the price control period, and alleged in several judicial and administrative proceedings that Texaco had violated certain applicable DOE price and allocation regulations in the sale of crude oil and refined petroleum products. Settlement discussions were held, and on March 10, 1988, the ERA and Texaco entered into a consent order. That consent order (Consent Order No. RTXE006A1Z) was finalized on August 29, 1988. 53 FR 32929 (August 29, 1988) (August 29 Notice). The consent order resolved all issues pertaining to Texaco's sales of crude oil and refined petroleum products during the period from January 1, 1973 through January 27, 1981 (the consent order period.[2] Pursuant to the consent order, Texaco will remit a total of $1.25 billion in accordance with a timetable specified in the consent order.[3] As of the date of issuance of the PDO, Texaco had remitted $348 million to the DOE and $52 million to the US. District Court in Kansas in settlement of its obligation in the DOE Stripper Well Exemption Litigation, M.D.L. 378.

In the PDO, we noted that the subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan to distribute funds received as a result of enforcement proceedings. We further stated that the DOE policy is to use the subpart V process to distribute such funds. We therefore tentatively granted the ERA's petition and assumed juristiction over the disbursement of the Texaco consent order fund.

Because the consent order resolves alleged violations involving both the sales of crude oil and refined petoleum products, we proposed to divide the consent order fund into two pools. As we stated in the PDO, the ERA determined that $120,000,000 of the total consent order fund was attributable to refined product issues, and the remaining $1,130,000,000 (including the $52 million paid to the U.S. District Court of Kansas) to crude oil related issues. *See* August 29 Notice at 32931. In the Decision and Order establishing the procedures for the distribution of the crude oil portion of the Texaco consent order fund, we agreed with the division of the consent order fund into crude oil and refined product pools in the amounts suggested by the ERA. *Texaco,* 19 DOE at 88,370. It is the distibution of the $120,000,000 to injured purchasers of Texaco refined products that is the subject of this Decision and Order.

Under the procedures set forth in the PDO, we presumed that Texaco's alleged violations occurred with the same frequency in all sales of refined products made by Texaco during the consent order period and that refunds should thus be made on a pro rata or volumetric basis. Under this "volumetric" refund approach, a claimant's "allocable share" of the refined product pool is equal to the number of gallons of covered products purchased during the consent order period times a per gallon refund amount. In the PDO, we tentatively set this refund amount at $0.001136 per gallon. We derived this figure by dividing the consent order funds allocated to the Texaco refined product pool ($120,000,000) by the approximate number of gallons of covered products other than crude oil which Texaco estimated it sold from March 6, 1973 the date that Texaco became subject to the Federal price controls under Special Rule No. 1, 38 FR 6283 (March 8, 1973), through the date of decontrol for the relevant products (a total of 105,590,045,356 gallons).

In accordance with prior Subpart V proceedings, we also proposed to adopt a number of presumptions regarding injury for certain categories of Texaco refined product purchasers. We tentatively adopted a presumption that an end-user or ultimate consumer of Texaco petroleum products whose business is unrelated to the petroleum industry was injured by the alleged petroleum overcharges settled by the consent order. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. We therefore proposed that end-users of Texaco refined petroleum products need only document their purchase volumes from Texaco during the consent order period to make a sufficient showing that they were injured by the alleged overcharges and to receive a full volumetric refund.

We also proposed that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, need only submit documentation of its purchases, or in the case of a cooperative, volumes sold to its members. However, we stated that any regulated firm or cooperative whose allocable share is greater than $10,000 would be required to (i) certify that it will pass through any refund it receives to its customers or member-customers, (ii) provide us with a written explanation of how it plans to accomplish the restitution, and (iii) notify the appropriate regulatory body or membership group of the receipt of the refund. These requirements are based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative that sold petroleum products, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds,

[2] The consent order also resolved certain allegations against Getty Oil Company, which has been acquired by Texaco. Those allegations relate to crude oil exchanges between Getty and Standard Oil Company of Ohio and were the subject of a Supplemental Remedial Order issued to Getty on July 17, 1986. Notice of Proposed Consent Order, 53 FR 15106, 15107–08 (April 27, 1988); *Getty Oil Co.,* 14 DOE ¶ 83,033 (1986).

[3] As these funds are received, they will be held in an interest-bearing escrow account at the Department of the Treasury pending the determination regarding their proper distribution. In addition, interest on the unpaid balance of the consent order amount accrues at a rate of 8.85 percent per annum. Texaco Consent Order ¶ 404.

would be passed through to its member-customers.

We also tentatively adopted the presumption that a firm which resold Texaco products and requests a refund under the small claims threshold was injured by the alleged Texaco regulatory violations. Under the proposed small claims presumption, a reseller claimant [4] seeking a refund of $10,000 or less, exclusive of interest, would not be required to submit evidence of injury beyond documentation of the volume of Texaco covered products it purchased during the consent order period.[5] As we have noted in numerous other proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, the use of a small claims presumption allows the OHA to process claims more efficiently.

We also tentatively adopted a 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Under this presumption, a reseller claimant whose allocable share of the consent order fund is greater than $10,000 may, in lieu of making a detailed demonstration of injury, elect to receive a presumption refund of $10,000 or 40 percent of its allocable share up to $50,000, whichever is greater. The presumptive level of injury of 40 percent would apply to all medium-range claimants, regardless of the type of Texaco refined products that they purchased. We stated that the use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges.

We therefore proposed that an applicant in this group would only be required to provide documentation of its purchase volumes from Texaco during the consent order period in order to receive the larger of $10,000 or 40 percent of its allocable share.

We also proposed that resellers who were eligible for refunds in excess of $10,000, but who did not elect to have their claim considered under the medium-range presumption or limited to $50,000 would be required to provide a detailed demonstration of injury. We stated in the PDO that such an applicant would be expected to show that it did not pass on the alleged overcharges to its own customers by demonstrating that it had a bank of unrecouped increased product costs beginning with the first month of the period for which a refund is claimed through the date on which the product was decontrolled. In addition, we provided that such a claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. We suggested that such a showing may be made in a competitive disadvantage analysis, which compares the price paid by the applicant with the average market price for the same product at the relevant level of distribution.

In the PDO we proposed several rebuttable presumptions of non-injury. We found that resellers who were spot purchasers of Texaco refined products were not likely to have been injured by their purchases from Texaco. Spot purchasers had considerable discretion in the timing of their purchases, and therefore would not have made those purchases unless they believed that they were able to pass through the full amount of Texaco's increased selling prices to their customers. In addition, we tentatively adopted a presumption that consignees of Texaco refined petroleum products were not injured by any alleged violations by Texaco.

Finally, we tentatively proposed several procedures to govern the filing of Applications for Refund submitted by representatives on behalf of Texaco refund applicants. In the PDO, we noted that although representatives in previous proceedings had generally provided a useful role in aiding the OHA in notifying potential claimants, some representatives have engaged in questionable practices that have led to many unnecessary errors and have made our task more difficult. As we stated in the PDO, these practices include the solicitation of applicants many months in advance of the formal opening of the filing process, inadequate attention by representatives to duplicate refund applications, and a general lack of knowledge of the substantive and procedural requirements of this Office. In an attempt to remedy these problems, we proposed several measures to be taken by any person or firm representing 10 or more applicants in this proceeding. These included the submission of a statement detailing each representative's qualifications to represent claimants before this Office, procedures it proposes to use in the preparation of Applications in the Texaco refund proceeding, information regarding its solicitation of potential applicants and procedures for distributing refunds it receives on behalf of refund applicants. Additionally, we proposed: (i) Strict compliance with the Subpart V requirement as specified in 10 CFR 205.283 that Applications be signed by the "applicant"; (ii) that representatives be required to post a bond, or place funds in escrow, in order to protect their clients; and (iii) that all refund applicants who are represented by filing services and who signed Applications before the issuance date of the final Decision and Order certify that as of the current date they still wish to be represented by the representative in the Texaco proceeding and that they will not file a duplicate claim.

II. Analysis of Comments Regarding the Distribution of the Texaco Refined Product Pool

As we stated earlier, the PDO was published in the **Federal Register** in April 1989. In addition, the OHA mailed the PDO to many interested parties. This generated numerous written comments regarding our proposed refund procedures. In addition, we held a public hearing on June 27, 1989. In total, 137 parties either submitted comments or offered testimony at the public hearing. Those parties consisted of 10 law firms or legal practitioners,[6] 7 firms engaged primarily or solely in the filing of refund applications on behalf of claimants,[7] one trade association, the National Association of Texaco Wholesalers (NATW); and 119 former Texaco consignees. These comments focused primarily on three areas: The presumptions of injury for resellers, the treatment of Texaco consignees, and proposals in the PDO regarding the

[4] Unless otherwise specified, in this Decision the term "reseller" will be used to refer to refiners, wholesalers and retailers who purchased and resold Texaco refined petroleum products.

[5] The $10,000 small claims threshold tentatively established in the PDO represents an increase from the $5,000 threshold used in many prior proceedings. In the PDO, we stated that the small claims amount should be increased to $10,000 in this proceeding since the large volumetric refund amount of $0.001136 would place many applicants who purchased relatively small volumes over the small claims threshold used in prior proceedings.

[6] Those law firms or sole practitioners were Robert Bassman and Douglas Mitchell of Bassman, Mitchell and Alfano, representing 525 individual marketers of Texaco refined petroleum products; Attorney Philip Kalodner; Collier, Shannon, Rill and Scott, representing the Society of Independent Gasoline Dealers of America; Robert P. Williams, II of Troutman, Sanders, Lockerman and Ashmore; Borenkind and Mondeschein; Michael O'N. Barron; William H. Bode and Associates; John Varnum of Baker and McKenzie; Amy Loeserman Klein and William H. Cohen representing five ocean carriers and J. Bradley Ortins, Andrew P. Miller and Milton B. Whitfield of Dickstein, Shapiro and Morin, representing 28 state governments and two territories.

[7] These seven firms were Energy Refunds, Inc.; Federal Refunds, Inc.; McMickle and Edwards, Oil Overcharge Consultants; Petroleum Funds, Inc.; Pure Energy; Federal Action; and Akin Energy Inc.

application requirements for claims filed by representatives. We will address comments regarding these and other issues below.

A. The Presumptions of Injury for Resellers

As stated above, in the PDO we proposed to adopt several presumptions of injury to goven the distribution of the $120 million refined products portion of the Texaco consent order fund. Many of the comments we received involved the presumptions of injury for resellers. None of the commentors objected to our proposal to adopt a small claims presumption of injury for refunds of $10,000 or less, and a number agreed that the proposed increase in the small claims amount from $5,000 to $10,000 is more equitable and efficient. Accordingly, we believe it is appropriate to adopt a small claims presumption level of $10,000 for the Texaco refund proceeding.[8] Bassman, Mitchell and Alfano (BMA) has filed comments suggesting that OHA should reconsider the medium-range presumption of 40 percent proposed in the PDO. BMA contends that a medium-range threshold of 75 percent for motor gasoline and 50 percent for middle distillates would be more appropriate for the Texaco refund proceeding. BMA claims that higher presumption levels will more accurately reflect the levels of injury incurred by Texaco resellers of those products.[9] To support this position, BMA has submitted information it gathered in a survey of its clients who were Texaco wholesalers during the period of controls. Each survey respondent indicated the volume of Texaco products it purchased and the price it paid to Texaco for those products. Of the 97 usable responses, 79 were from purchasers of regular gasoline, 73 from purchasers of premium gasoline and 59 from purchasers of middle distillates. BMA compared the pricing information received from these respondents to the average market price for that product in the relevant marketing region as recorded by *Platt's Oilgram and Oilmanac*, a reliable source of average market price data. In those months in which the respondent paid more than the average market price as recorded by *Platt's*, BMA considered the respondent to be "injured" for that month. BMA then computed the percentage of months that the respondents paid greater than the market average. In the survey sample, an average of 75 percent of motor gasoline purchases and 50 percent of distillate purchases were made at above market average prices.[10]

Upon review of the information that BMA has submitted, we have reconsidered the proposed 40 percent presumption. BMA's survey information now convinces us to increase the presumption level. However, separate presumption levels for motor gasoline and middle distillates would not be practical. Although we have previously utilized separate presumption levels for separate products, *see, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*), and *Getty*, this practice was not an efficient one. Multiple presumption levels created confusion among applicants, led to administrative problems for the OHA, and delayed the issuing of refunds to applicants. Therefore, in recent refund proceedings involving global consent orders, we have adopted a single medium-range presumption level. *See, e.g., Exxon Corp.*, 17 DOE ¶ 85,590 (1988) (*Exxon*); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989) (*Shell*). This decision rested upon our belief that "[t]he purpose of the medium-range presumption approach is to provide a simplified alternative refund procedure for certain types of applicants and allow OHA to process these applications with greater efficiency." *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,511 (1986) (*Marathon*). These same considerations will govern here. As we have decided in all recent proceedings involving global consent orders, a single presumption level for all products sold at all levels of distribution is the most efficient way to handle a large number of claims.[11]

We also are not persuaded by BMA's alternative argument that we adopt a single, higher medium-range presumption level for all products representing a weighted average of BMA's motor gasoline and distillate data.[12] Several weaknesses are apparent in the survey information on which BMA would have us rely for this purpose. All responses received by BMA were from Texaco wholesalers. However, according to information received from Texaco, sales to wholesalers comprised only 26.8 percent of its total sales volume. *See* Texaco letter. Using sample data for a segment constituting only approximately one-fourth of the total sales volume universe would be unreliable. Additionally, BMA's proposal to adopt a higher medium-range presumption level based upon a weighted average would overcompensate a significant percentage of potential claimants. In making its calculations, BMA has simply averaged the "injury" responses that it has received. However, the survey respondents indicate that a large percentage of the survey respondents allege they were injured less than 62 percent of the time.[13] Thus, were we to

[8] One commentor, Webster Olson, an individual motorist from Chicago, Illinois, objects to the small claims presumption, stating that motorists that purchased asoline, and not Texaco retailers, are the victims of Texaco's alleged violations and therefore should receive refunds. It is important to note that the small claims presumption does not constitute a determination that resellers absorbed all of the alleged Texaco overcharges; nor does it preclude end-users from receiving refunds. However, because of the administrative costs in processing refund applications, we cannot approve refunds of less than $15.00. Most individual motorists did not purchase enough Texaco products to qualify for this minimum cutoff. It is for this reason that any funds remaining after the payment of eligible claims will be distributed to state governments to provide indirect restitution through energy conservation programs to the many citizens who were injured by the alleged Texaco overcharges but who could not satisfy the $15.00 threshold. See infra, Part IIIC.

[9] BMA has not made any proposals regarding the presumptive levels for resellers of products other than motor gasoline and middle distillates.

[10] This method is similar to that adopted by this Office in the *Getty* proceeding. *See Getty Oil Co.*, 15 DOE ¶ 85,064, (1986) *(Getty)*. In *Getty* the DOE initially proposed that different presumption levels be established for each level of distribution of motor gasoline. The Proposed Decision and Order in the *Getty* proceeding determined that based upon company-specific information obtained from the Energy Information Administration (EIA) regarding Getty's pricing of motor gasoline, a medium-range presumption level of 7 percent should be established for wholesalers of motor gasoline. *See Getty Oil Co.*, 50 FR 51934, 51938 (December 20, 1985). BMA pointed to inaccuracies and contradictions in the EIA information and submitted survey results which indicated that a presumption level of 41.5 to 51.0 percent would be more appropriate for wholesalers of motor gasoline. We agreed to raise the presumption and adopted a medium-range presumption of 40 percent for resellers of motor gasoline in that proceeding.

[11] Furthermore, the adoption of different presumption levels for motor gasoline and distillates, as proposed by BMA, would be unfair to purchasers of other Texaco products. In the cases where we have adopted different presumption levels for certain products, we have not established any medium-range presumption levels for purchasers of other refined products. *See Amoco; Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*). In the present case, these other refined products (natural gas liquids (NGLs), natural gas liquid products (NGLPs), residual fuels, aviation fuels, etc.) comprised 26.7 percent of Texaco's sales by volume during the control period. *See* letter from Stephen Bard, General Attorney, Texaco Inc., to Richard W. Dugan, Associate Director, OHA (November 16, 1989) (Texaco letter). The BMA medium-range presumption levels thus exclude a significant percentage of Texaco's total sales.

[12] Based on the information BMA has submitted, this weighted-average presumption level would be 62 percent.

[13] Of the respondents who were middle distillate wholesalers, a majority (67 percent) experienced injury below 62 percent. The surveys indicate that of the regular gasoline wholesalers, 28 percent reported injury levels of less than 62 percent. For premium gasoline, 25 percent of the respondents reported injury levels of less than 62 percent.

average the survey results, the presumption level derived would not accurately reflect the injury level experienced by a significant proportion of the survey respondents. We would therefore overcompensate two-thirds of the purchasers of middle distillates and a significant percentage of motor gasoline resellers. We recognize that this risk is inherent in establishing any medium-range presumption. Yet, in this instance, raising the medium-range presumption level to 62 percent would only exacerbate the problem, and we do not believe that equity or efficiency favors adopting this proposal.[14]

Taken collectively, these questions regarding the sufficiency of the survey information convince us that it would not be proper to adopt the presumption levels that BMA has suggested. However, based on the BMA information, some modification in the medium-range presumption is in order. First, the BMA information does indicate that a significant group of Texaco customers—motor gasoline and middle distillate wholesalers—paid more than the market average a large percentage of the time. Secondly, both BMA and the NATW have presented information regarding Texaco's declining market share nation-wide during this period. BMA has submitted information showing that Texaco's national market share fell from over 8 percent (1st place) in 1973 to 5.85 percent (5th place) in 1981. BMA. May 3, 1989 Comments at 7. We have previously determined that the existence of a declining market share by a consent order form may serve as evidence of uncompetitive pricing practices by that firm. *Cf. Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 at 88,051–2 (1982) (decline in retailer's market share may be caused by supplier's increased prices).[15] In view of these factors, we believe that the adoption of a medium-range presumption of 50 percent is reasonable. It applies not only to those resellers that were the focus of the BMA survey, but also to all resellers of Texaco refined petroleum products, including NGLPs, residual fuels, etc.

Several commentors have suggested that we also modify the maximum refund amount that an applicant can receive under the medium-range presumption. These commenters suggest that the maximum refund amount that resellers may receive under this presumption without any showing of injury be raised from $50,000 to $100,000. BMA argues that since the suvey it conducted shows that many more claimants can demonstrate higher levels of injury, an increase in the maximum amount is warranted to avoid a large number of claims which attempt to demonstrate a specific level of injury. The law firm of Collier, Shannon, Rill and Scott (CSRS) also argues that the medium-range limit should be extended to $100,000 to avoid an excessive number of attempted injury showings. *See* CSRS comments (May 3, 1989).

We are convinced by this suggestion that the upper limit should be increased to $100,000. Under the medium-range presumption of 50 percent that we will adopt for this proceeding, a claimant would have had to purchase more than 90,909,090 gallons during the consent order period to be eligible for a potential refund of $50,000. Such a reseller would on average have purchased approximately 1,000,000 gallons a month. In our view, claimants this large would likely have the resources to make a showing of injury. To adopt a ceiling of $100,000 for presumption level refunds would allow these large applicants to receive very sizable refund amounts simply by providing their purchase volumes from Texaco. There is nothing in subpart V or our procedures that warrants this result. Accordingly, we will adopt a limit of $50,000 that can be received under the medium-range presumption for resellers.

B. The Treatment of Texaco Consignees

In the PDO, we tentatively adopted a presumption that Texaco consignees were not injured by Texaco's alleged price violations and therefore not entitled to receive refunds in this proceeding. This rebuttable presumption has been adopted in several prior refund proceedings involving major oil companies, *e.g.*, *Exxon*, *Marathon*, *Getty*, *Amoco*, and *Mobil*, and is based upon the fact that consignees generally did not retain title to the product that was consigned to them or set the price at which that product was sold. Instead, a consignee received a set per gallon commission from its refiner/supplier and tended to be unaffected by overcharges by its supplier. As a result, consignees were not considered resellers or retailers for the purposes of the DOE price regulations.

In the present proceeding, the NATW and its members have presented a very substantial argument that our position should be reconsidered here in view of the actual business operations of Texaco consignees and the historic practices of Texaco towards its consignee agents. However, before we begin discussion of the issues raised by the NATW, it is helpful to review the treatment of consignees under the Mandatory Petroleum Price and Allocation Regulations.

The regulations promulgated by the DOE and its predecessor agencies controlled both the price charged for petroleum products and the allocation of those products. These regulations recognized the role that consignees played in the distribution of petroleum products and therefore specifically addressed whether, and to what extent, consignees were covered by the regulations. A consignee (sometimes called a commission agent) was defined under the regulations as:

> [A] firm which distributes covered products to purchasers under a contractual arrangement with a refiner under which the refiner retains title to the covered products and specifies the prices to be paid by the purchasers, and under which the refiner pays the consignee agent a commission based upon the volume of covered product distributed by the consignee agent.

10 CFR 212.31 (definition of "Consignee Agent"); 39 FR 12012 (April 2, 1974).

The agency recognized that consignees performed many of the same functions as resellers, but since the price charged for the petroleum products they delivered and their commissions were controlled by the refiner, "the (DOE) reseller price rules have no applicability to consignee agents' commissions." 39 FR at 12012. This position, that consignees were not covered under the Mandatory Petroleum Price Regulations at 10 CFR part 212, was challenged by consignees throughout the period of controls. However, the DOE consistently maintained its position that consignees, unlike resellers and retailers, were not covered under the price regulations. *See* Interpretation 1975–48 (Rotary Gasoline Dealers), 5 Fed. Energy Guidelines ¶ 56,286 (November 24, 1975); Interpretation 1977–8 (R.C. Fresh), 5 Fed. Energy Guidelines ¶ 56,345 (May 11, 1977).

The status of consignees was different under the Mandatory Petroleum Allocation Regulations at 10 CFR Part 211. Under these regulations, the DOE determined that in certain circumstances, a consignee was considered a wholesale purchaser-reseller and was entitled to an allocation from its refiner. In a 1975 ruling, the agency stated that a

[14] Furthermore, resellers who have been injured above the presumption level have an opportunity to receive a larger refund if they successfully make a detailed demonstration of injury. *See infra*.

[15] While other factors aid in explaining Texaco's declining market share, such as the withdrawal from several marketing regions, uncompetitive pricing was undoubtedly one factor in explaining this drop. *See, e.g.*, Abercrombie testimony, transcript of Texaco public hearing (Tr.) at 178–79.

consignee would be considered a wholesale-purchaser reseller, and therefore entitled to an allocation from its refiner/supplier, if it had most, if not all, of the following characteristics:

(i) Appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's products,

(ii) Responsibility, independent of its supplier, for its internal financial management and physical and administrative operation,

(iii) Responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of the transfer and sale of its supplier's products, and,

(iv) Independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than solely being restricted to distributing product to customers designated by the supplier.

Ruling 1975-8, 2 Fed. Energy Guidelines ¶ 16,048 at 16,614, Texaco consignees, it was determined, generally had the characteristics of wholesale-purchaser resellers and were entitled to a base period allocation from Texaco. *See* Interpretation 1975-19 (National Association of Texaco Consignees, Inc.), 5 Fed. Energy Guidelines ¶ 56,260 (April 24, 1975).

Although we proposed to establish a presumption in this proceeding that Texaco consignees were not injured, this presumption could be rebutted if a consignee established that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Texaco's pricing practices. *See Texaco Inc.*, 54 FR at 13424 (citing *Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 (1986) (*Gulf/Canter*)). Additionally, as in other proceedings, consignees that qualified as wholesale-purchaser resellers could make allocation-based refund claims in instances where their supplier improperly failed to provide them with their full allocation entitlement. *See Tenneco Oil Co./Kellermyer Inc.*, 10 DOE § 85,092 (1983) (*Tenneco/Kellermyer*).

The NATW maintains these options are inadequate. In its comments, the NATW makes a forceful argument that Texaco consignees in general during the consent order period were seriously injured, and in many cases forced out of business, by Texaco's practices. The NATW contends that Texaco consignees should be eligible for refunds approximating those for which wholesalers of comparable size are eligible. In support of its contention, the NATW first presented evidence and testimony that Texaco consignees were, in effect, functionally equivalent to Texaco jobbers. The NATW argues that Texaco consignees had what amounted to title to the product that they consigned. According to testimony received at the public hearing, Texaco consignees bore the risk of loss for consigned product, were required to carry insurance against such loss and had the ability to reduce the price that they charged for Texaco products. *See* Barstow testimony, Tr. at 137-9. The NATW further claims that its position was supported by the DOE in the adjudication of a dispute between a consignee and Texaco which resulted in the conversion of the consignee to a wholesaler. *See* NATW Comments at 9 (citing *J.A. Nere, Inc.*, Proposed Decision and Order (Case No. DEE-0891) (July 10, 1981) (*Nere*)).

Furthermore, the NATW alleges that Texaco violated the allocation regulations in its treatment of its consignees. Specifically, it alleges that Texaco failed to offer consignees their allocation entitlement from Texaco as mandated under the regulations.[16] The NATW bases this claim on several actions by Texaco. First, the NATW contends that Texaco generally reduced or rescinded a consignee's allocation if the purchaser of the consigned product decreased its purchases or was unable to pay Texaco on time. The NATW contends that these "take backs" were a violation of the allocation regulations since the consignee, not the retail account, had the allocation entitlement with Texaco. *See, e.g.*, NATW's May 3, 1989 Comments at 7. In addition, the NATW and consignee commentors contend that Texaco limited consignees' ability to transfer their allocations among their customers. *See, e.g., Id.* at 8. Furthermore, these commentors contend that Texaco intentionally raised its prices to levels that made it difficult for consignees to sell the product and that Texaco used this pricing policy to actively discourage consignees from taking their full allocation entitlement. *Id.*; Abercrombie testimony, Tr. at 179.

Moreover, the NATW continues, consignees were adversely affected by Texaco's violation of the normal business practices provision of the regulations. This rule stipulated in part that "(s)uppliers will deal with purchasers of an allocated product according to the normal business practices in effect during the base period specified in Part 211 for that allocated product * * * and no suppliers may modify any normal business practices so as to result in the circumvention of any provision of this chapter." 10 CFR 210.62(a). These "normal business practices" included summer fill programs, seasonal credit arrangements and other credit arrangements. Additionally, this section required that "(n)o supplier shall engage in discrimination among purchasers of any allocated product," which included "extending any preference or sales treatment which had the effect of frustrating or impairing the objectives, purposes and intent of (the regulations)." 10 CFR 210.62(b). According to both the comments of the NATW and the testimony at the public hearing by consignees, many of Texaco's actions constituted violations of the normal business practices requirements outlined above.

Specifically, the NATW contends that Texaco actively withdrew many of the credit services provided consignees during the base period. According to the testimony of former Texaco consignees, Texaco refused to increase credit limits for consignee retail accounts during the period of controls. *See, e.g., id.* at 140-41. Additionally, NATW members contend that Texaco also refused to continue to grant credit privileges to new retail accounts of Texaco consignees, thereby encouraging each new account to seek to be supplied by Texaco directly. *See* Barstow testimony, Tr. at 170-71. According to these commentors, Texaco also removed credit privileges extended to consignees to pay for consigned products and required payment on delivery of the product. *See* Abercrombie testimony, Tr. at 198.

The NATW also contends that Texaco violated the normal business practices rule by failing to continue to provide routine maintenance and machinery to consignees or their accounts. According to the NATW, during the base period Texaco had provided consignees with a variety of services, including the loaning of bulk plants, pumps and signs. In addition, Texaco was alleged to have routinely provided services such as lights, paved roads and pumps to accounts supplied by consignees.[17]

[16] In support of these allegations, the NATW has submitted the results of a survey regarding the impact of Texaco's alleged allocation violations. According to the results of this survey, during the years 1974 through 1980, an average consignee was denied approximately 15 percent of its yearly allocation entitlement by Texaco's alleged actions. *See* letter from Thomas West, Executive Director, NATW to Victor Miller, OHA Staff Analyst (June 28, 1989).

[17] The NATW maintains that traditionally the major oil companies had performed these services for consignees as a normal business practice. In support of this claim, the commenting Texaco consignees referred to the disparity between

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According to the NATW, after Texaco refused to continue to provide these services, consignees were forced to provide these services themselves or lose business. The NATW alleges that when a consignee chose to continue to supply these services, the entire cost of the service was absorbed by the consignee since it was unable to raise its price and received no subsequent reimbursement from Texaco. Thus, the NATW claims that Texaco's alleged violation of the normal business practices rule had a direct and deleterious impact on the viability of many consignees' businesses.[18] The NATW contends that the existence of these violations is confirmed by a Remedial Order to Texaco. *See* NATW Comments at 9 (citing Notice of Probable Violation, Amended Proposed Remedial Order, *Texaco Inc.* (Case No. 630R00116)).

The NATW contends that all of these actions were part of an orchestrated attempt by Texaco to eliminate the consignee class of trade. The NATW alleges that Texaco's plans to eliminate consignees as a class are contained in an in-house Texaco report published in 1977 entitled "Texaco 5-year Wholesale Marketing Plan" (hereinafter referred to as the 5-year Plan, a copy of which was submitted for the record in this proceeding). According to the NATW, the 5-year Plan called for elimination or conversion of all consignees by 1981, a goal that the NATW claims Texaco met on time.[19] *See* NATW comments at 16–17; Abercrombie testimony, Tr. at 196.

As summarized above, the NATW and its members have presented a considerable amount of information regarding the specific practices of Texaco towards its consignee agents. After a detailed review of this evidence, we have concluded that our tentative determination in the PDO that these consignees are not entitled to refunds based upon a presumption of injury conflicts with the record and should be changed. We adhere to our prior determination that Texaco consignees were generally not injured by Texaco's alleged violations of the price regulations.[20] Nevertheless, we have determined that a persuasive case has been made that these consignees were injured by Texaco's alleged allocation practices and that a presumption of injury for consignees should therefore be adopted.

Initially, it is important to reiterate that this final Decision and Order is in no way an adjudication of any of the particular claims made by the consignees. Furthermore, as the consent order states, Texaco does not admit to any violations of the regulations and this Decision does not assess prior allegations or raise new ones against the firm. Instead, we have simply determined that consignees should be presumed eligible for refunds in this proceeding as a matter of equity in light of the evidence of injury that they have presented. In addition, consignees should be eligible for refunds in this proceeding on an equal basis with resellers. That is, for the reasons described below, we have concluded that consignees should be entitled to receive refunds on a volumetric basis just as resellers, and that these refunds should be determined subject to the small claims presumption, medium-range presumption and proofs of injury described in Part III of this Decision.

The major factor in the adoption of a presumption of injury for consignees in this refund proceeding is there is sufficient evidence to conclude that Texaco took actions that resulted in a decrease in the allocations of its consignees below their actual entitlements. In arriving at this determination, we have relied on the standards for evaluating allocation claims that have been adopted in other refund proceedings and applied in evaluating refund applications. *See, e.g., OKC Corp./Town and Country Markets, Inc.*, 12 D.O.E. ¶ 85.094 (1984)(*OKC/Town & Country*); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 at 89,049–50 (1989), *action for review pending*, CA–3–89–2983–G (N.D. Tex. filed Nov. 22, 1989)(*Marathon/RFI*). Those standards require that an allocation claimant demonstrate its claim is "not spurious" by showing that (i) it notified the DOE contemporaneously of its alleged allocation reduction, (ii) there is a reasonable likelihood that a violation occurred, i.e., that the consent order firm improperly refused to supply products, and (iii) it was injured as a result of its reduction in allocation.

The information presented by the NATW meets these standards. First, the NATW has submitted numerous letters clearly demonstrating that allegations of improperly reduced allocations of Texaco consignees were presented to the FEA and the DOE during the controls period by the NATW and individual consignees. *See* Request for Interpretation from Fred Causey, Executive Director, NATW, to Robert Montgomery, General Counsel, FEA (April 24, 1975); letter from Gale Barstow, Inc., to Larry White, Acting Director of Compliance, FEA (July 22, 1977); Application for Class Exception, Case No. DEE–6543 (June 9, 1979). Secondly, the NATW and the Texaco consignees have made a reasonable demonstration that the actions allegedly taken by Texaco, which have been summarized above, reduced consignees' allocations in violation of the allocation regulations. As stated above, Texaco consignees, as wholesale purchaser-resellers, were entitled to allocations from Texaco. Based upon the

consignee commissions and jobber margins. According to the commentors, the difference between a jobber margin and a consignee commission allowed jobbers to provide certain services without any aid from the supplier. Consignees, on the other hand, received a smaller commission, but their supplier performed these services for them. *See* Hickey testimony, Tr. at 121–22.

[18] The NATW also claims that Texaco discriminated in the price it charged consignees for purchases made for their "own account." "Own account" purchases are different from a consignee's allocation in that these gallons were purchased and resold by a consignee with a margin, instead of a commission, earned on the transaction. According to the NATW, Texaco consignees should have been charged the same price as other wholesalers for these purchases. Instead, consignees allege that they were charged the dealer tank wagon price on these purchases, which was approximately $0.04 per gallon higher than the price charged to wholesalers. *See* November 16, 1989 NATW letter from Thomas West to the OHA. These "own account" gallons were actually wholesale purchases under the regulations and therefore different from consigned gallons. Consignees are entitled to claim a refund on these purchases in the same manner as all resellers, even without the adoption of a presumption of injury for consignees.

[19] The NATW claims that the effect of the 5-year Plan can be seen in Texaco's treatment of consignee commission. At the start of controls, Texaco consignees received a commission of $0.0235 per gallon. This commission was raised to $0.0285 in May of 1974. However, in June of 1977, the commission was reduced to its previous level of $0.0235. This action, the NATW contends, came at a time that the regulations were modified to allow refiners to pass through the cost of increased non-product costs incurred by the consignee. Eventually, the regulations were modified to allow a refiner to pass through the entire cost of increased consignee commissions in order to encourage refiners to raise consignee commissions. According to the NATW, the decrease in a consignee commissions was a deliberate attempt to force consignees out of business.

[20] Contrary to the NATW's position, Texaco was not required to treat consignees the same as resellers under the price regulations. Nothing in either the regulatory history of the price controls or the Decisions of this Office, including the *Nere* Decision, support that position. First, the *Nere* Decision was a *Proposed* Exception Decision and not a final order issued by this Office. Furthermore, that case never resulted in a final adjudication since the parties requested dismissal. *See* letter from Richard W. Dugan, Associate Director, OHA, to Gregg Potvin, Attorney for J.A. Nere Co., Case No. DEE–8091 (July 10, 1981). Additionally, an exception decision as distinguished from a Remedial Order, is not a general regulatory interpretation, but a case-specific determination of an equitable nature to allow actions not otherwise permitted under the regulations. Finally, the proposed *Nere* exception decision does not in any way indicate that *Nere* was covered by the price regulations, but only that it would have been equitable to treat the firm as a jobber.

information submitted in this proceeding, it appears likely that Texaco improperly failed to offer a large majority of Texaco consignees the full allocation to which they were entitled under 10 CFR part 211. Finally, the Texaco consignees have shown that they were injured by these alleged actions which resulted in a decrease in gross commissions, and therefore in their gross revenues. This is confirmed by the survey information submitted by the NATW which shows that, on average, consignees lost a significant percentage of their base period allocations by the end of the period of controls. *See supra*, n.16.

Additionally, we conclude that there is good evidence of alleged violations by Texaco of the normal business practices rule, thereby reducing the ability of its consignees to receive their allocations.[21] As the NATW has testified, Texaco's alleged refusal to continue providing normal business services often encouraged a consignee's accounts to find another supplier. Once an account elected not to take the product from the consignee, Texaco then generally did not allow the consignee to reassign the allocation and it removed those gallons from the consignee's monthly entitlement. Over time, the removal of such services resulted in the reduction of a consignee's allocation and therefore was a contributing factor to the injury experienced by consignees.

Since the alleged allocation violations and the resultant injury experienced by the consignees were both widespread and substantial, we have concluded that a presumption of injury for consignees is appropriate. Refund claims filed by consignees should be evaluated using certain presumptions that have generally been available to other claimants in Subpart V proceedings. The use of presumptions in refund cases is specifically authorized by the Subpart V regulations. 10 CFR 205.282(e). In accordance with this provision, we adopted a presumption for consignees in a prior proceeding where this presumption was warranted. *See Gulf*, 16 DOE at 88,739 (10 percent of the volumetric amount awarded to consignees). We have also adopted refund presumptions for allocation claimants where such presumptions were warranted by the record. *See Elias Oil Co.*, 19 DOE ¶ 85,061 (1989) (*Elias*) (volumetric refund based upon volume received by claimant); *Gibbs Industries, Inc.*, 14 DOE ¶ 85,460 (1986) (*Gibbs*) (volumetric refund based upon volume not received by claimant). The presumptions for consignees we are adopting in this proceeding are designed to permit consignees to participate in the refund process at a reasonable cost, and to enable the OHA to consider refund claims by consignees in the most efficient way possible given its limited resources. If we were not to utilize presumptions for consignees in this proceeding, we anticipate that we would receive hundreds of firm-specific allocation-based refund claims from Texaco consignees. These claims would be complex and multifaceted, and, in view of the time that has elapsed since the consent order period, the necessary showings would be extremely difficult for an individual consignee to make in the context of a refund application. Furthermore, analysis of many complicated, non-presumption allocation claims would require the OHA to devote a disproportionate effort to a relatively small percentage of refund applications in the Texaco proceeding.[22]

In determining the level at which consignees are to be granted presumption refunds, we have considered all of the factors which have contributed to the injury experienced by consignees. None of these factors alone is determinative of the appropriate presumption levels. However, taken collectively, we have concluded that these factors justify adopting the following presumptions for consignees in this proceeding.[23]

First, we will adopt a volumetric presumption to allocate refunds to consignees who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all consignees experienced an equal amount of loss per gallon as a result of not receiving their full allocation entitlements from Texaco during the consent order period. As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly, and avoids detailed examination of the impact of the violation on each firm. *See Amoco*, 10 DOE at 88,199.

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric amount will be the per gallon volumetric amount applicable to all claimants in the Texaco refund proceeding. Successful consignee-claimants generally will be awarded refunds based upon the volume of Texaco product consigned to them multiplied by the volumetric rate. We recognize that establishing a refund methodology using volumes not supplied by Texaco would also be reasonable. *See Gibbs*. However, in this case the number of gallons not supplied is not readily determinable for most refund applicants.[24] Under similar circumstances in the *Elias* proceeding, we determined that each allocation claimant's allocable share would be calculated by multiplying the volumetric refund amount by the number of gallons purchased. Using the *Elias* methodology in the present proceeding is reasonable since it eliminates the need to establish a separate volumetric rate for consignees. This method is also justified since the survey data submitted by the NATW shows that consignees generally failed to receive the same percentage of their allocations regardless of the size of their allocation entitlements.[25]

[21] We do not, however, accept the NATW's allegation that the DOE previously determine that Texaco violated the normal business practices rule. The NATW refers to an Amended Proposed Remedial Order (APRO) (Case No. 630R00116) issued on December 26, 1978 to support the proposition that Texaco's pricing practices towards consignees violated normal business practices and were discriminatory. However, this APRO was not a final determination by the DOE. After consideration of Texaco's objections, the DOE issued a final Decision and Order dismissing the claims that formed the basis of the APRO. *See Texaco Inc.*, 6 DOE ¶ 83,010 (1980). Nevertheless, for the pruposes of this proceeding, there is sufficient evidence that removal of these services occurred, and that it resulted in a decrease in consignee's allocations.

[22] Since the implementation of the Subpart V regulations in 1979, the OHA has granted only eight non-presumption allocation claims. *See Marathon/RFI* Appendix B. In contrast, according to Texaco, in 1975 it had 1,005 bulk plant consignees and 181 tank-truck dealer consignees. See 5-year Plan at 15. The NATW estimates that a significant percentage of these will seek refunds in this proceeding. *See* letter from Thomas West, Executive Director, NATW, to Victor Miller, OHA Staff Analyst (November 20, 1989).

[23] A consignee who does not elect to use these presumptions may still attempt to obtain a non-presumption allocation refund on the basis of the methodology used in a number of prior allocation cases. However, that claimant must submit firm-specific information demonstrating that it meets the standards for an allocation refund; it cannot rely on the generalized information submitted by the NATW in this proceeding. Furthermore, if a non-presumption claimant submits information that indicates it was not subject to Texaco's alleged allocation violations, its allocation refund claim will be denied and it may not receive a presumption refund instead. *Cf. Marathon/RFI* (allocation claim denied since consent order firm's failure to supply claimant was not improper).

[24] Texaco has informed us that while it does not have any records of volumes not consigned, it does have information regarding the amounts consigned and delivered to individual consignees during the consent order period. Texaco has further stated that it will attempt to provide the consigned volume information to any former consignee who can inform Texaco of its consignee "station number."

[25] To the extent that there were some slight differences, they show that consignees with larger

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Accordingly, the allocable share of a consignee-claimant will be based upon the volume of Texaco product consigned to it multiplied by the volumetric rate.

We will also apply the small claims and medium-range presumption of injury to consignees. These presumptions are appropriate for consignee-claimants for the same reasons that have led to their adoption for resellers. Consignees with allocable shares of less than $10,000 in all likelihood do not have the resources necessary to allow them to demonstrate their injury. The small claims presumption will allow them to receive refunds without a detailed demonstration of injury. Furthermore, larger consignees, with potential refund claims of over $10,000, were likely to have been in a position to offset some of the effects of Texaco's alleged actions. *See, e.g.,* Abercrombie testimony, Tr. at 179–80. Therefore, these claimants should not be able to receive their full allocable share unless they can demonstrate that they were injured. *See infra*, Part III.

As a result of our finding that consignees are eligible for refunds, it is necessary to modify the volumetric refund amount in this proceeding. In the PDO, we proposed a volumetric rate of $0.001136 per gallon. This rate was determined by dividing the amount of money available ($120,000,000) by the total estimated volumes of eligible products sold by Texaco. However, we have determined that the addition of consignees to the refund process should add to the total volume of products eligible for refunds in this proceeding. According to Texaco, 7,280,957,181 gallons of covered products were distributed through Texaco consignees. *See* letter from Stephen Bard, General Attorney, Texaco Inc. to Richard W. Dugan, Associate Director, OHA (November 21, 1989). Therefore, we will adjust the volumetric to take into consideration the 7,280,957,181 gallons of eligible consigned products. In addition, Texaco has informed us of two other, relatively minor refinements to the figures it previously provided us for the total volume of products it sold during the controls period.[26] After making these adjustments, the volumetric refund amount for this proceeding is calculated to be approximately $0.001058 per gallon. For administrative efficiency, we have rounded the volumetric amount to $0.0011 per gallon.

C. Requirements for Applications Filed by Representatives

As we have noted in the PDO, the OHA has received a proliferation of refund applications filed on behalf of potential applicants by "representatives," i.e., refund services, consulting firms and attorneys. These applications have often not met the standards of submitting proper refund claims under subpart V or this Office's procedures. Our evaluation of these claims has frequently uncovered errors, inaccuracies and even deliberate misstatements. In an attempt to deal with these problems, we proposed to adopt measures to inquire into the competency, knowledge and procedures of the representatives and to curb actions that have led to improper and inaccurate filings in past proceedings. These proposals were summarized in Part I, *supra*. We sent PDO two representatives that have previously appeared regularly before this Office and we have received numerous comments. In sum, commentors object to each and every aspect of our proposal. The commentors, as a whole, contend that our proposals are unnecessary, duplicative of current requirements, unworkable, and contrary to traditional attorney-client practices.

Initially, some of the commentors contend that the term "filing service" as used in the PDO is ambiguous. William Bode and Associates (Bode), a law firm, claims that the term filing service is vague and overly inclusive, thereby requiring that anyone filing an application conform to these requirements. *See* Bode Comments at 1–2 (April 25, 1989).

A significant number of those commenting contend that these requirements are unnecessary. For instance, Bode states that "the number of firms which may have followed questionable practices is quite small, and . . . it is more appropriate for the OHA to take individual corrective action, as it has been doing, than it is to burden all applications filed by representatives with these onerous, additional requirements." *Id.* at 2. This sentiment is echoed by another attorney, Michael O'N. Barron (Barron), who asserts that other similar efforts "to discourage people from using refund services were totally ineffective.' Barron Comments at 5 (April 25, 1989).

Additionally, the attorneys who have submitted comments argue that the mechanisms to ensure honest and proper representation on their part are already in place, making the OHA requirements unnecessary. According to these commentors, the American Bar Association Code of Professional Responsibility and individual state bar rules regulating the professional conduct of attorneys prohibit filing claims without the consent of the claimant and engaging in other forms of misrepresentation. Such actions, under those rules, may ultimately result in disbarment or other disciplinary actions. According to these commentors, the possibility of such sanctions is more of a disincentive to submit false information in a refund proceeding than the proposed OHA procedures.

Other commentors contend that our proposed requirements, particularly the submission to this Office of information regarding the representative's operations, would violate the confidentiality of the attorney-client relationship. In particular, Robert P. Williams, II (Williams) argues that the fee arrangements a lawyer has with clients is confidential and cannot be waived by the lawyer. Additionally, he states that since an attorney is generally authorized to sign pleadings on behalf of a client, attorneys should be permitted to sign refund applications on behalf of potential applicants in this proceeding. See Williams Comments at 3 (April 4, 1989).

Many commentors complain that one or more of the proposed requirements are unworkable. These commentors object chiefly to our suggestions that representatives (i) post a bond to ensure the distribution of the refunds to their clients and (ii) submit information regarding their practices, including solicitation practices, before the filing of applications. They also object to the proposed requirement that applications signed before the issuance date of the final Decision and Order contain a recertification of the claimant's intention to retain the services of the representative and that the claimant has and will not file a duplicative claim.

While some of the commentors' arguments have weight, we do not find them controlling here. Many are based purely on self-interest considerations. These commentors generally contend

allocations tended to be denied slightly higher percentages of their entitlements. There was no evidence in the survey indicating that consignees with smaller entitlements were denied gallons to a greater proportional extent than larger consignees. Thus, granting larger allocation refunds to consignees with larger allocation entitlements is reasonable.

[26] According to Texaco, its original total sales volume figure did not include volumes sold in Puerto Rico during the controls period. However, Texaco has recently located records that allow it to estimate its total applicable sales in that region. These sales have now been added to the total sales volume figure in making our calculation. Additionally, Texaco has discovered that it inadvertently included sales made to its Jefferson Chemical affiliate in the total volume calculation. We have now reduced the total sales volume figure accordingly.

that the problem is limited and that duplicative applications, inaccuracies, and the other problems we have identified are not the result of willful malfeasance but instead result from carelessness on the part of the applicant or other representatives, not themselves. *See* Barron testimony, Tr. at 44; testimony of Eric T. Small (Small), Tr. at 215–218. They also generally contend that they commit no errors, only other representatives do. None of these comments gives us comfort. As we stated in the PDO, we view the growing problems caused by the practices of some filing services with great concern. *See* PDO, 54 FR at 13426 (citing *Ken's Professional Waterproofing*, 18 DOE ¶ 85,771 (1989), and *Herbert L. Tanner*, 18 DOE ¶ 85,105 (1988)). Whether or not errors have been committed deliberately, problems resulting from the practices of some representatives have made the efficient administration of subpart V refund proceedings much more difficult, take disproportionate time, and operate to the detriment of most claimants and responsible representatives. Therefore, we believe that further action is needed to ensure that the subpart V process continues to function effectively.

This Office has the responsibility for overseeing the actions of representatives that appear before it. *See* 10 CFR 205.3. Under subpart V, OHA has a mandate to provide restitution to "injured persons in order to remedy the effects of a violation of the regulations of the Department of Energy." 10 CFR 205.280. Representatives are not "injured persons" entitled to restitution in this proceeding. They differ from refund applicants in that they have no claim in these proceedings except on behalf of their clients. Therefore, it is essential that all representatives obtain their authorization explicitly from claimants who have a reasonable understanding of both the role a representative plays for them in gaining their refund and their right to appear before this Office without the assistance of another party if they so choose. Without such an understanding, a potential applicant will have relinquished a portion of its restitutionary claim based upon inaccurate or misleading information. Our proposals here seek to further the important ends of providing restitution to those who were injured by Texaco's alleged violations and ensuring that representatives are operating to the largest extent possible in the interests of the applicant. These proposals were made with the intention of ensuring that the subpart V process continues to provide effective and equitable restitution to those injured by petroleum overcharges.

Furthermore, it should be noted that in the period since we have issued the PDO, we have experienced additional problems caused by the practices of some representatives. We received testimony at our public hearing which indicated that, despite our warnings to the contrary, early solicitation of potential refund applicants was occurring. *See* Small testimony, Tr. at 217. Early solicitation of potential applicants creates serious problems in the refund process. Such solicitations often occur well in advance of the actual date on which claimants may file applications. This often results in applicants erroneously concluding that they must take immediate action in order to receive a refund, which increases the pressure for an applicant to engage the services of one or more representatives.[27] Additionally, and even more importantly, because these solicitations occur before final procedures have been established by this Office, they often contain misleading information and reflect an ignorance of the specific requirements for the refund proceeding for which the applicant is being solicited.[28]

Moreover, since the Texaco PDO was issued, we have been forced to deny a representative the privilege of appearing before this Office due to a gross pattern of continued errors and misrepresentations in the applications that it prepared and filed. *See P.A.D., Inc.*, 19 DOE ¶ 85,228 (1989). In the case of another filing service, we have determined that its questionable practices and carelessness justified mailing the refund checks directly to the applicant instead of the filing service. *See, e.g., Exxon Corp./Balala's Exxon*, 19 DOE ¶ 85,399 (1989) (*Exxon/Balala's*). We have received numerous duplicative applications, some filed by different representatives on behalf of the same applicant.[29] *See, e.g., Exxon Corp./Walline's Exxon*, 19 DOE ¶ 85,698 (1989). Collectively, these examples indicate that we continue to encounter problems with claims filed by representatives. We therefore believe that further measures are necessary to prevent some of these problems.

We also believe that the requirements we adopt should apply to all applications filed by anyone other than the individual who actually purchased the products from Texaco. The term "filing service" is a generic one and it will be used in this proceeding to refer to any individual or company that intends to file 10 or more Applications for Refund in the Texaco refund proceeding based upon purchases made by others from Texaco. It does not, as several commentors have suggested, apply solely to those firms whose businesses consist only of filing refund applications. Therefore, both lawyers and non-lawyers are considered "filing services" for the purposes of this proceeding and shall comply with the requirements that we will adopt.[30]

In this case, no restriction of any sort is being placed on any filing service. Instead, we simply seek information regarding a representative's general practices of gaining clients, preparing applications, etc. Such information requests are well within the OHA's authority to obtain information as to the identity of the applicant and to investigate refund applications fully. *See* 10 CFR 205.284 (b) and (c). This

[27] This conclusion is supported by the experience of the California Service Station Association (CSSA). According to the CSSA:

(C)onfusion arises out of the fact that refund companies are contacting the dealers before the settlement is finalized or notification or forms have been sent out. The first time that a dealer is ever aware that he might be eligible for a refund is when he is contacted by a refund company. The dealers think that they have overlooked the notification from the DOE or were never notified * * * (S)ome dealers, thinking that they might have forgotten to file, agree to have companies do it for them. Sometimes they agree to give as much as 30 percent of their refund to the company. Then, when they find out that they could have filled out the forms (themselves), directly from the DOE, they sometimes feel as if they have been taken to the cleaners.

Letter from Art Boswell, CSSA, to Victor Miller, OHA (October 17, 1989).

[28] In addition, many of the solicitation letters seek authorization for several proceedings at once and are very confusing. On several of these "mass" solicitations, the specific per gallon refund amount an applicant may expect to receive is not listed. Without such information, a potential claimant cannot evaluate whether it is in his interest to use the services of the representative or file on his own. Other solicitations regarding only the Texaco refund proceeding contain information that is now inaccurate, such as the previous volumetric amount, the information necessary for filing an application form, and the date submissions will be accepted by the OHA.

[29] For example, in the *Exxon* proceeding, we have dismissed almost 300 duplicative claims, many of which have been filed by filing services as a result of careless practices and early solicitation. *See, e.g., Exxon Corp./Star Exxon*, 19 DOE ¶ 85,403 (1989).

[30] Any representative that believes it cannot comply with any of the procedural measures that we adopt due to a conflict with the requirements of state law should indicate its objection in a letter to our Office. We will review and issue determinations on these requests individually.

information is useful to both the OHA and the applicant because in certain circumstances we have advised a representative that its solicitation was factually incorrect or potentially misleading to applicants. Additionally, in other cases where we find that a representative has misled clients or failed to perform its duties as a representative responsibly and competently, we have ordered refund checks to be sent directly to the applicant, *See Exxon/Balala's; Gulf Oil Corp/E-Z Shop Food Store,* 20 DOE ¶ 85,029 (1990) (refund sent directly to applicant because a representative provided no procedural or substantive service). In some instances our attempts to protect the interests of the applicants have been hampered by the fact that adequate information regarding practices of the filing services is not available to the OHA unless a disgruntled applicant chooses to inform our Office. Therefore, we have determined that the proposal that all representatives submit general information regarding their practices is reasonable and appropriate.[31]

We will also require that each application be signed by the applicant. We are unwilling to accept special or generalized powers of attorney in refund proceedings before this Office. The increasing problems that have appeared as a result of applications signed by filing services, including some attorneys, lead us to strictly construe the regulations that govern subpart V proceedings. Subpart V expressly requires that each application must be "signed by the applicant." 10 CFR 205.283(c). This section further requires *each applicant* to swear that all information in the application is true and accurate to the best of its knowledge and belief, and to reveal whether any other claim has or will be filed in this proceeding. In order to ensure that the applicant has understood these requirements and the penalties for filing an improper or duplicate claim, we will require the applicant, or a responsible corporate officer of the applicant firm, to sign the application. This signature requirement allows the OHA to evaluate each application with confidence in the veracity of its contents.

Furthermore, it is in the best interests of both the representative and the applicant, as well as the OHA, to have the applicant review and sign the application before it is submitted. By having the applicant sign the application form, both the applicant and the representative can avoid possible confusion, lessen the chances of an inadvertently filed duplicate application, and be assured of the accuracy and completeness of the information being submitted. This should be a normal procedure followed by any representative. Thus, we believe that a requirement that the applicant sign the application form will not pose an undue burden upon attorneys or other representatives in this proceeding.

We are therefore adopting the following proposals.[32] Each filing service shall, contemporaneously with its first filing in the Texaco proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[33] This statement should contain the following information: [34]

(a) A description of the procedures used to solicit refund applicants in the Texaco proceeding and copies of any solicitation materials mailed to prospective Texaco applicants;

(b) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(c) A description of how the filing service obtains and verifies the information contained in refund applications;

(d) A description of the procedures used to forward refunds to its clients;

(e) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR part 205 and this proceeding.

Secondly, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Thirdly, in any case where an application has been signed and dated before the issuance of this Decision and Order, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. This certification should state that the applicant has not filed and will not file any other Application for Refund in the Texaco refund proceeding and that, after having been provided a copy of the OHA Information Sheet in this proceeding, it still authorizes that filing service to represent it.[35]

In addition, the OHA reiterates its policy to closely scrutinize applications filed by filing services. Applicants submitted by a filing service should contain all of the information indicated in this Decision and Order.[36] *See infra,*

[31] Due to the comments we have received, we have determined not to require detailed information regarding the fee arrangements between filing services and applicants. However, we may request such information if we discover problems with a fee arrangement during the course of the Texaco refund proceeding.

[32] We have concluded that the proposed requirement that firms post a bond or place funds in escrow is not necessary at this time to ensure the effective distribution of the Texaco consent order funds.

[33] This statement should be submitted under separate cover and reference the Texaco refund proceeding, Case No. KEF-0119.

[34] As several commentors have stated, this information with regard to some filing services has already been requested and received by this Office. *See* BMA Comments at 3. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of the Proposed Decision and Order in this proceeding (March 24, 1988) need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (a)-(e) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that may have been made.

[35] One commentor, BMA, contends that the recertification requirement would impinge upon the long standing relationship it has developed with the refund claimants it represents. BMA misunderstands the purpose of the recertification. It is not intended to question any legitimate authorization obtained by representatives, but to avoid duplicate filings. Since many representatives have obtained their authorization well in advance of the initiation of the Texaco refund proceeding, their clients may not be aware that a claim is being filed on their behalf. In any event, this requirement would not appear to affect BMA. As indicated above, the recertification requirement is only applicable if an application form is signed *before* the issuance date of the Texaco Decision and Order. According to BMA, its clients do not sign the application form until after the issuance date of the Decision and Order. *See* Bassman testimony, Tr. at 85.

[36] A filing service commentor has objected to the inclusion of the applicant's current name and address in the copy of every refund application which is routinely made available to the public in the OHA Public Reference Room. By disclosing this information, the commentor claims that other, disreputable filing services will use this information to resolicit applicants who have already filed claims. We, of course, recognize that resolicitation for the same proceeding is improper and would give rise to serious consequences. However, it would be inappropriate to withhold this information from the public. The name and address of a petitioner to this Office does not fall within the scope of the exemptions listed in the Freedom of Information Act. *See* 5 U.S.C. 552(b); 10 CFR part 1004(b).

Part III. Generally, if the applicant was a direct purchaser, the application should include a purchase volume schedule received from Texaco.[37] If the applicant has not received a volume schedule from Texaco and has attempted to obtain one by contacting Texaco, these efforts should be described in the application. Filing services should not file incomplete applications with the OHA. This practice may result in a delay in the processing of these claims, and possibly cause dismissal of the applications. Furthermore, the OHA stresses that in cases where there is a record of misrepresentation or gross incompetence by a filing service, the OHA may suspend the filing service pursuant to 10 CFR 205.3 or order that refunds be sent directly to the applicant.

D. Other Comments

We have received two other general comments regarding the distribution of the Texaco refined product pool. One commentor, Barron, contends that the $120 million refined products pool should be divided into two separate pools, one for purchasers of NGLs and NGLPs and another for purchasers of all other products. According to Barron, disputes involving the pricing of NGLPs and NGLs by Texaco accounted for a majority of the issues that were settled by the Texaco consent order. Therefore, Barron proposes that most ($114 million) of the refined product pool be set aside for purchasers of Texaco NGLPs and NGLs, with the remaining $6 million for purchasers of all other Texaco products.

There is no merit to Barron's argument. The Texaco consent order settles all regulatory violations alleged against Texaco, whether known or unknown at the time of settlement. The Texaco refund proceeding is therefore not limited to one or more groups of customers, or to products and time periods that were the focus of specific DOE enforcement proceedings. Rather, its purpose is to provide restitution to all claimants who purchased covered products from Texado during the consent order period. The use of a single, per gallon volumetric refund amount applicable to purchasers of all Texaco products reflects the fact that there has been no final determinations that Texaco overcharged its customers. Therefore, apportionment of the fund in the manner suggested by Barron would be inconsistent with the Texaco consent order and our procedures. In addition, it is not true that a large majority of Texaco's alleged violations occurred solely in sales of NGLs and NGLPs. The single refined product Remedial Order issued to Texaco involved allegations regarding Texaco's pricing of motor gasoline and distillates. This Remedial Order was issued in final form on April 11, 1986 and consisted of alleged violations of $142,783,783 in cost overrecoveries in the sales of these products. *See Texaco Inc.*, 14 DOE ¶ 83,016 (1987).

Additionally, several commentors contend that purchasers of Getty products during the period January 1, 1979 to January 27, 1981 should be granted refunds in the Texaco refund proceeding. According to these commentors, purchasers of Getty products during this period have never been given an opportunity to receive refunds because the previous *Getty* refund proceeding, 15 DOE ¶ 85,064 (1987), did not cover products purchased during that period. These commentors argue that since Texaco subsequently purchased Getty, refunds for these claimants should be made from the Texaco consent order fund. This argument is incorrect since Getty's alleged violations during the time period in question were covered by a second consent order between Getty and the DOE. *See* Notice of Proposed Consent Order, Getty Oil Co., 47 FR 20347 (May 12, 1982); Action on Consent Order with Getty Oil Co., 47 FR 31039 (July 16, 1982). This issue was therefore resolved before Texaco purchased Getty and is not relevant in this proceeding.

III. Refund Procedures for the Texaco Refined Product Pool

A. Standards for the Evaluation of Claims

This section sets forth the standards applicable to the evaluation of refund claims in the Texaco refund proceeding. From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities, and cooperatives; (iii) refiners, resellers and retailers (collectively referred to as "resellers"); and (iv) consignees.

In order to receive a refund, each claimant will be required to submit a schedule of its purchases of Texaco refined petroleum products during the consent order period.[38] If the product was not purchased directly from Texaco, the claimant must establish that the product originated with Texaco.[39]

In addition, a reseller or consignee claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Texaco's alleged regulatory violations. This showing will generally consist of tow distinct elements. First, a reseller claimant will be required to show, through credible, firm-specific data, that it has "banks" of unrecouped increased product costs beginning in November 1973 or the first month of the period for which a refund is claimed, through the date on which the product was decontrolled.[40] In addition, such a

[37] Texaco has agreed to make volume information available to potential claimants in this proceeding. Direct purchasers who do not receive this volume information can contact Texaco in writing to inquire as to whether such information is available. Requests should be mailed to: Texaco Inc., Attention: DOE Customer Refund Coordinator, P.O. Box 5080, Bellaire, TX 77402-5080.

When an applicant contacts Texaco, it should state its customer number(s) for which it is requesting volume information.

A filing service commentor suggests that OHA should allow it to receive its clients' volume information directly from Texaco. We do not agree with this self-serving proposal. Moreover, it presents a number of practical problems. Texaco should not be put in the position of determining the validity of a filing service's claim to represent former Texaco customers. That is the OHA's responsibility. In addition, if the Texaco volume information was released directly to a filing service instead of the applicant, the applicant might not be given the opportunity to determine whether this information is correct or should be supplemented with information from its records. Accordingly, Texaco will be requested to release volume information only to its former customers, and not to representatives.

[38] Although consignees did not actually *purchase* petroleum products from Texaco, we will refer to purchases made by resellers and volumes consigned to consignees as "purchases" in Part III of this Decision. Documentation of volumes for any direct purchaser, including consignees, consists of either (i) a volume schedule from Texaco showing an applicant's purchases which may be accompanied by any supplemental information if the applicant believes that this schedule is incomplete or inaccurate, or (ii) a schedule showing the volume of each product purchased from Texaco by the applicant in each month of the consent order period taken from the applicant's business records. Estimated volumes will be accepted only if actual volume figures are unavailable from Texaco's or the applicant's records, and the applicant provides reasonable estimates based upon a reliable source of information and clearly describes its estimation method.

[39] Indirect purchasers who establish that their purchases originated with Texaco will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the alleged violations to its customers. *Compare Southern Union Co./Union Carbide Corp.*, 16 DOE ¶ 85,026 (1987) (full refund to indirect purchaser) *with Resource Extraction and Processing/Mobil Oil Corp.*, 15 DOE ¶ 85,145 (1986), *reconsideration denied*, 15 DOE ¶ 85,334 (1987) (no refund to indirect purchaser). As a result, applications from indirect purchasers will generally be considered only after evaluating the applications of their suppliers.

[40] Retailers and resellers of motor gasoline were required to maintain cost bank data only until July 15, 1979 and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank material subsequent to those dates. However, for each month of the respective banking period through January 1981, resellers will have to show that their margin was less than the applicable fixed margin specified in 10 CFR 212.93.

claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. This showing may be made in a competitive disadvantage analysis, which compares the price paid by the applicant with the average market price for the same product at the relevant level of distribution. *See Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070 at 88,105 (1983).[41]

A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges or is eligible for a refund of less than the applicable presumption-level amount, will not then be eligible for a presumption-based refund. Instead, such a claimant will receive a refund which reflects the level of injury established in its Application. No refund will be approved if its submission indicates that it was injured as a result of its purchases from Texaco. *See Exxon*, 17 DOE at 89,150 n.10.

1. *Presumptions for Claims Based upon Refined Product Purchases.* As we discussed above and in the PDO, refunds will generally be made on a pro-rata or volumetric basis.[42] Under the volumetric approach, a claimant's "allocable share" of the refined product pool is equal to the number of gallons purchased from the consent order firm during the applicable consent order period times the per gallon refund amount. In the present case the volumetric is $0.0011. In addition, each applicant is entitled to receive a proportionate share of the accrued interest.[43] We will also adopt the presumptions set forth in the PDO with the exception of the proposed presumption of non-injury for consignees, for whom we have adopted a new presumption as explained above. These presumptions will simplify the refund process and will help ensure that refund claims are evaluated in the most efficient and equitable manner possible. In addition to the volumetric presumption, we also adopt a number of presumptions regarding injury for claimants in each category listed below.

a. *End-users.* End-users of Texaco refined petroleum products, i.e., consumers, whose use of the product was unrelated to the petroleum business, are presumed injured and need only document their purchase volumes from Texaco during the consent order period to be eligible to receive their full allocable share.

b. *Refiners, Resellers, Retailers and Consignees Seeking Refunds of $10,000 or Less.* Reseller and consignee claimants, whose allocable share is $10,000 or less, i.e., who purchased 9,090,999 gallons or less of Texco refined petroleum products during the consent order period, will be presumed injured and therefore need not provide a further demonstration of injury, besides documentation of their volumes, to receive their full allocable share.

c. *Medium-Range Refiner, Reseller, Retailer and Consignee Claimants.* In lieu of making a detailed showing of injury, a reseller or consignee claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 50 percent of its allocable share up to $50,000.[44] An applicant in this group will only be required to provide documentation of its purchase volumes of Texaco refined petroleum products during the consent order period in order to be eligible to receive a refund of 50 percent of its total volumetric share, or $10,000, whichever is greater.

d. *Regulated Firms and Cooperatives.* We have determined that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of petroleum product purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm, or a cooperative whose allocable share is greater than $10,000 will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund.[45]

e. *Spot Purchasers.* We have adopted a rebuttable presumption that a reseller that made only irregular or sporadic, i.e., spot, purchases from Texaco did not suffer injury as a result of those purchases. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Texaco. In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banks. *See Quaker State Oil Refining Corp/Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

2. *Allocation Claims.* We may also receive claims based upon Texaco's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation Decisions such as *Amoco*, 10 DOE at 88,220, and refund application cases such as *Mobil Oil Corp./Reynolds Industries Inc.*, 17 DOE ¶ 85,608 (1988), *Marathon/RFI*, and *Tenneco/Kellermyer*. These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was

[41] Since a consignee, unlike a reseller, was not subject to the reseller price rule, it cannot meet the injury requirements we have established for resellers. Instead, a consignee that accepts the volumetric methodology, but wants to show that it was injured by more than the medium-range presumption amount, must demonstrate the extent to which it was forced to reduce the selling price of a product, and thus its commission as a result of competitive pressures. One way of showing that a failure to receive a full commission was caused by competitive factors is to present evidence indicating the price Texaco initially established for the consignee's customers was more than the average market price in each month.

[42] Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, we will allow any purchaser to file a refund application based upon a claim that it experienced a "disproportionate share" of Texaco's alleged overcharges. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refund amount, we will prorate the alleged overcharge amounts by the ratio of the Texaco consent order amount as compared to the aggregate overcharge amount alleged by the ERA. *See Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989) *(Amtel/Whitco)*.

[43] In addition, as in previous cases, we have established a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims for less than $15.00 outweighs the benefits of restitution in those cases. *See, e.g., Mobil*, 13 DOE at 88,852.

[44] That is claimants who purchased between 9,090,909 gallons and 90,909,090 gallons of Texco refined petroleum products during the consent order period may elect to utilize this presumption. Claimants who purchased more than 90,909,090 gallons may elect to limit their claims to $50,000.

[45] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See Total Petroleum/Farmers Petroleum Cooperative*, 19 DOE ¶ 85,215 (1989).

obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury. [46]

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Texaco may have had to the alleged allocation violation. *See Marathon/RFI.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocaton violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Texaco. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Texaco consent order amount that the agency attributed to allocation violations in general and to the specific allocation violaton alleged by the claimants. Finally, since the Texaco consent order reflects a negotiated compromise of the issues involved in the enforcement proceeding against Texaco and the consent order amount is less than Texaco's potential liability in those proceedings, we will prorate those allocation refunds that would otherwise be disproportionately large in relation to the consent order fund. *Cf. Amtel/Whitco.*

B. Refund Application Requirements

We will now accept Applications for Refund from purchasers of refined petroleum products sold by Texaco during the period between March 6, 1973, the date that Texaco's sales became regulated under Special Rule No. 1, and January 27, 1981. There is no specific application format that must be used. However, a suggested application form for applicants in the Texaco refund proceeding is set forth in Appendix A to this Decision and Order. Retailer and reseller-retailer applicants should file separate forms (with supporting volume schedules) for each retail station for which a refund is requested. [47] All Applications for Refund should contain the following information:

(1) A conspicuous reference to "Texaco Refund Proceeding—Case No. KEF-0119" and the name and address of the applicant during the period for which the claim is filed, as well as the name of the person to whom the refund check should be made out and the address to which the check should be sent. The application should also contain the current name, mailing address and telephone number of the applicant, if it is different from the above.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The use(s) of the Texaco product(s) by the applicant, e.g., whether the applicant was a refiner, petroleum jobber, gas station, consumer, consignee, public utitlity, or cooperative.

(4) If the applicant was a direct purchaser, a copy of a volume schedule prepared by Texaco. If such a record is unavailable, or the applicant was an indirect purchaser, monthly schedules of the applicant's purchases of each refined petroleum product that it purchased from Texaco from March 6, 1973 through the date of decontrol of that product (see p. 3 of suggested application form for decontrol dates) may be submitted. The applicant should indicate the source of this volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was supplied directly by Texaco, it should provide its Texaco customer number. If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by Texaco.

(6) If the applicant is a refiner, reseller, retailer or consignee whose volumetric share exceeds $10,000, it must indicate whether it elects to receive as its refund the larger of $10,000 or 50 percent of its allocable share up to $50,000. If it does not elect to use the presumption, it must submit a detailed showing that it was injured by the alleged overcharges. *See supra* Part IIIA.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other refund application in the Texaco proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization. [48]

(8) If the applicant is or was entirely or partly owned by Texaco, it should explain the nature of the affiliation. Affiliates or subsidiaries of Texaco are presumptively held not to have been injured since their receipt of a refund would allow the consent order firm to benefit from this proceeding. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.,* 15 DOE ¶ 85,288 at 85,528 (1987). This presumption applies both to firms affiliated with Texaco during the consent order period but no longer affiliated with the firm and firms that have become affiliated with Texaco after the consent order period but before the payment date (March 10, 1988). [49]

(9) A statement indicating whether the applicant owned the business that purchased the products from Texaco during the entire portion of the period for which it requests a refund. If not, it should indicate the name and address of the firm that made those purchases, the date of the purchase/sale of the business and an explanation of why the applicant believes it is entitled to a refund. [50]

(10) The Application should also contain the following statement signed by the individual applicant or a responsible official of the business or organization applying for a refund:

"I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that

[46] In view of the fact that the presumption of injury we have established for consignees is based upon alleged violations by Texaco of the allocation regulations, consignees are not eligible for a separate allocation-based refund if they elect a presumption-level refund.

[47] Resellers, consignees and end-users are encouraged to use only one application form for their various operations conducted under the same name, but should list separately the volumes of each refined petroleum product. In the case of consignees, separate volume schedules should be used for consigned and purchased ("own account") gallons.

[48] If duplicate Applications containing this statement are filed, both Applications may be summarily denied or dismissed. *See Exxon Corp./William H. Abbott,* 18 DOE ¶ 85,406 (1988); *Getty Oil Col./Dale Gas & Oil Co.,* 18 DOE ¶ 85,376 (1988).

[49] For a list of identifed Texaco affiliates that will be ineligible under this presumption, see Appendix C to this Decision and Order.

[50] The OHA has previously held that the party that actually purchased the products from the consent order firm was in all likelihood the party injured by any alleged overcharges and thus the proper recipient of a Subpart V refund, unless the purchaser was a corporation whose stock was sold or the right to a refund was otherwise explicitly transferred. *See, e.g., Gulf Oil Corp./Strubes Propane, Inc.,* 16 DOE ¶ 85,314 (1987); *Eastern of New Jersey/Reheis Chemical Co., 16 DOE ¶ 85,056 (1987).*

the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room."

All Applications must be sent to:

Texaco Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

In addition, each filing service should comply with the requirements specified in Part IIC *infra*. All Applications for Refund should be filed in duplicate (the original and one complete copy) and be postmarked no later than February 28, 1991.[51]

C. Distribution of Product Funds Remaining after First Stage

Any refined product funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1988 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any refined product pool funds in the Texaco consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Texaco customers will be distributed in accordance with the provisions of PODRA.

It is therefore ordered that:

(1) Applications for refined product refunds from the funds remitted to the Department of Energy by Texaco Inc. pursuant to the consent order finalized on August 29, 1988 may now be filed.

(2) Applications for Refund for funds from the refined product pool must be postmarked no later than February 29, 1991.

Dated: March 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix B

BILLING CODE 6450-01-M

[51] Any applicant who believes that its Application for Refund contains confidential information must indicate so on the first page of the Application and submit two additional copies of the Application with the confidential information deleted, together with a statement indicating why the information is alleged to be confidential. An applicant may request that confidential information be withheld from disclosure, but the OHA retains the right to make its own determination with regard to any claim of confidentiality. *See* 10 CFR 205.9(f)(2). In view of the length of time that has elapsed since the end of the price control period covered by the Texaco consent order, it will be difficult for an applicant to establish that the information that it submits is exempt from public disclosure under Exemption 4 of the Freedom of Information Act. *See Vinson & Elkins*, 9 DOE ¶ 80,150 (1982).

Suggested Format for Application for Texaco Refund – RF 321

RF 321 -

DOE use only

1. Name of Applicant Firm during refund period (3/73-1/81): _____

Address during refund period: _____

_____

_____

2. To whom should refund check be payable? _____

Address to which check should be sent: _____

_____

_____

Contact Person: _____

Telephone No.: ( ) _____

3. Type of Applicant: (Check all applicable categories)

Gas Station_____ Consignee _____ Petroleum Jobber_____ Public Utility_____Cooperative_____

Consumer_____ Other_____
(please specify business) (please specify)

4. (a) Total gallonage for which refund is requested: [ ]
(Enter total gallons here)

(b) Product(s) (e.g., gasoline, propane): _____

(c) Source of your gallonage information: Attached purchase schedule from Texaco_____
(If estimates, explain method on separate sheet.) Own Records (Specify)_____

5. If you are a petroleum marketer (refiner, reseller, or retailer) or consignee and the total gallonage of your firm and all affiliated entities multiplied by $0.0011 exceeds $10,000, (purchases of 9,090,909 gallons) do you elect 50 percent of that amount or $10,000, whichever is greater (see Information sheet questions 7-8)?

Yes ☐ No ☐ Not Applicable ☐

If you do not elect the 50 percent presumption of injury method, or if you are requesting a refund greater than $50,000, attach the required "injury" showing. (see the Decision & Order for details on the injury showing required.)

(Check One)

6. Was the product you bought Texaco-branded? Yes ☐ No ☐

7. Were you supplied by Texaco directly? Yes ☐ No ☐

If yes, please provide Texaco customer or consignee number(s) here_____. If no, (i)attach an explanation of why you believe the product was sold by Texaco and (ii)include the name and address of the person or firm from which you purchased the product.

8. Is (was) your business owned all or in part by Texaco? If yes, please explain. Yes ☐ No ☐

9. Have you or a related firm filed any other application for Texaco refund? If yes, attach an explanation. Yes ☐ No ☐

10. Have you or a related firm authorized any individual(s) or firms, other than those identified on this form, to file an application on your behalf in this Texaco refund proceeding? If yes, attach an explanation. Yes ☐ No ☐
NOTE: YOU ARE PERMITTED TO FILE ONLY ONE APPLICATION FOR THE SAME PURCHASES.

11. Were you the owner of the retail outlet or other business that made the purchases from Texaco for which you are applying for a refund? If not, explain why you believe you are entitled to a refund for those purchases and provide the name and address of the person or firm that made those purchases. Yes ☐ No ☐

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

_____
Date

_____
Signature of Applicant

_____
Name of Applicant (Print)

_____
Title

Current Applicant Mailing Address

Street:_____

_____

City:_____**State:**___ **Zip:**_____

Phone:_____

SCHEDULE OF PURCHASES

NOTE: YOU DO NOT NEED TO COMPLETE THIS PAGE IF YOU ATTACH THE PURCHASE VOLUME SCHEDULE PROVIDED BY TEXACO.

Name of Applicant: _____ **RF321-**

MONTHLY PURCHASE VOLUMES OF _____
(PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******	____	____	____	____	____	____	____	____
February	*******	____	____	____	____	____	____	____	*******
March	____	____	____	____	____	____	____	____	*******
April	____	____	____	____	____	____	____	____	*******
May	____	____	____	____	____	____	____	____	*******
June	____	____	____	____	____	____	____	____	*******
July	____	____	____	____	____	____	____	____	*******
August	____	____	____	____	____	____	____	____	*******
September	____	____	____	____	____	____	____	____	*******
October	____	____	____	____	____	____	____	____	*******
November	____	____	____	____	____	____	____	____	*******
December	____	____	____	____	____	____	____	____	*******
Yearly Total	____	____	____	____	____	____	____	____	____

TOTAL FOR THIS PRODUCT: _____ GALLONS

Claims for less than $15.00 will not be processed (13,636 gallons total purchases).

✔ **Do not include any purchases of product on or after that product's date of decontrol. (See below for decontrol dates)**

Product	Date Decontrolled	Product	Date Decontrolled
Motor Gasoline, Propane	January 28, 1981	Diesel Fuel, Kerosene	July 1, 1976
Butane and Natural Gasoline	January 1, 1980	No. 1 and No. 2 Heating Oil	July 1, 1976
Aviation Gas and Jet Fuel	February 26, 1979	Residual Fuel	June 1, 1976
Naphtha-Based Jet Fuel	October 1, 1976	Ethane and Asphalt	April 1, 1974
Naphthas	September 1, 1976		

BILLING CODE 6450-01-C

Appendix A

Information Regarding the OHA TEXACO Refund Proceeding

Note: The following information is designed to assist those applicants that have basic questions about filing procedures. It is not comprehensive and does not respond to many of the complex questions that applicants for large refunds may have.

INSTRUCTIONS FOR FILING TEXACO REFUND APPLICATION FORMS

(1) All applicants may use the suggested refund application form and the Schedule of Purchases attached to it. Motor gasoline retailers should use a separate form for each gas station for which a refund is claimed. If you need additional forms, you may photocopy this one or copy it onto white paper.

(2) Each applicant should submit answers to all the questions on the suggested application form and suitable "volume documentation" (see Question 1 below).

(3) An ORIGINAL AND ONE COPY of the entire application should be submitted. Copies may be made onto white paper.

(4) Applications should be printed or typed. The completed application should be mailed to:

Texaco Inc. Refund Proceeding
Office of Hearings and Appeals
Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

(5) There is a $15.00 minimum refund. If you purchased less than 13,636 gallons of eligible Texaco products between March 6, 1973 and January 27, 1981, you will not receive a refund.

(6) All applications must be postmarked by February 28, 1991.

COMMON QUESTIONS REGARDING REFUND APPLICATIONS

(1) How do I document my purchase volume from Texaco?

Texaco has provided many direct purchasers with a computer printout of their eligible purchase volumes. If you have received one of these printouts, you should submit it with your application. If you agree with the information on your Texaco volume sheet, this printout serves as sufficient volume documentation and you do not have to complete the Schedule of Purchases. However, if you do not receive a printout, you should attempt to obtain one from Texaco by writing:

Texaco Inc.
Attention: Texaco DOE Customer Refund Coordinator
P.O. Box 5080
Bellaire, Texas 77402-5080

If you have received a volume printout, but disagree with the information on it, you should submit a copy of the printout as well as a monthly schedule for each product that you purchased. If you are unable to obtain a copy of your volume printout from Texaco, you may support your claim by submitting a monthly purchase schedule for each product purchased from Texaco. Further references to "volume documentation" in these questions refer to your Texaco printout and any supplementary material you may submit.

(2) I owned one gasoline retail outlet and I bought both gasoline and diesel fuel from Texaco. How should I file an application?

You should file one application form. In response to Question 4 of the application, you should state the sum (in gallons) of all Texaco products purchased and list the different types of products. You should also provide your volume documentation. If you own two retail outlets, file two application forms (with separate supporting volume documentation).

(3) I purchased gasoline from Texaco. What is the time period during which my purchases are eligible for a refund?

Purchases are eligible for refunds only if made when a particular product was subject to Federal price controls. Motor gasoline and propane were subject to price controls from March 6, 1973 through January 27, 1981. Other products were subject to price controls for shorter periods. See Schedule of Purchases for decontrol dates.

(4) My name is "John Smith." I was a Texaco wholesaler and the name of my business was "ABC Petroleum Products." What name should I use to answer Question 1 on the application (Name of Applicant)?

In this question, we are looking for the name of the business that actually purchased the products from Texaco. Thus, if the product was purchased by the firm "ABC Petroleum Products," the answer to Question 1, Name of Applicant, should be "ABC Petroleum Products."

(5) How will the DOE calculate my refund?

Under most circumstances, for each eligible gallon of Texaco product purchased an applicant can receive a refund of $0.0011. We call this "the volumetric refund amount." If, for example, you purchased 1,000,000 gallons of Texaco gasoline from March 1973 through January 27, 1981, you can generally expect a refund of approximately $1,100 (1,000,000 gallons x $0.0011/gal = $1,100)(plus interest). DOE will make the final calculations.

(6) Who is eligible for a "small claims refund"?

Petroleum marketers (refiners, resellers and retailers) are eligible for a "small claims refund" if their refund is $10,000 or less based upon the documented volume of eligible Texaco products purchased (9,090,909 gallons or less).

(7) How are refunds calculated using the 50 percent presumption of injury method?

The 50 percent presumption of injury method is available to petroleum marketers whose "volumetric share" (volumetric refund amount multiplied by eligible gallons) exceeds $10,000. Under the 50 percent method, refunds are calculated by multiplying the volumetric share by 50 percent. The applicant will receive either this amount (up to $50,000) or $10,000, whichever is greater, without being required to make a more detailed showing of injury.

(8) I am a petroleum marketer who bought a large volume of Texaco products and do not want to use the 50 percent presumption method. What information should be included in my refund application?

If you do not wish to use the 50 percent presumption method, there are special "injury" requirements you must meet in addition to submitting all of the information required of all applicants. These requirements are outlined in the Texaco Decision and Order. If you fail to show injury, or demonstrate that you are entitled to receive a refund less than the presumption level, you may receive a lesser refund or none at all.

(9) How can I get a copy of the Texaco Decision and Order?

You may write or call the Office of Hearings and Appeals at the address or telephone number listed in Question 17 below. Upon request, a copy of the Decision will be mailed to you.

(10) Can I elect the 50 percent presumption even if I bought a very large volume of Texaco product?

Yes. Any petroleum marketer applicant may always elect to limit its refund to $10,000 or 50 percent of its volumetric share, up to $50,000, whichever is greater. Since this avoids the need to submit detailed information and the possibility of a finding of non-injury, many petroleum marketers choose to limit their claims in order to take advantage of this simplified procedure. Interest on the Texaco settlement funds which DOE has placed in escrow will be added to the refund.

(11) I was a consumer (end-user) of the products that I purchased from Texaco. What do I need to submit in order to receive a refund?

In order to receive a refund, answer all of the questions on pages 1 and 2 of the application form (answer "Not Applicable" to Question 5) and provide a copy of your volume documentation.

(12) Must I have an attorney or other representative file on my behalf?

No. Most refund applications are filed directly by the individual or firm that purchased petroleum products. Furthermore, the OHA is willing to aid you free of charge with any questions that you may have regarding your application. However, if you choose to have a representative file on your behalf, you must sign the application form.

(13) I was a Texaco consignee. Am I eligible for a refund?

Yes. In this proceeding, consignees of Texaco products are eligible for refunds on an equal basis with resellers. Accordingly, consignees who complete an application form, including volume documentation of the product consigned to them, are eligible to receive refunds. Refund amounts will be determined using the volumetric approach described in Question 5 and either the small claims or the 50 percent presumption will be used in determining a consignee's refund. Consignees seeking a larger refund must submit a more detailed "injury" showing as described in the Texaco Decision and Order. A consignee who was also a reseller during the controls period should submit only one application but separate volume documentation for reseller portions of its business.

(14) How long will it take before I receive a refund?

We cannot say for sure because we expect thousands of refund applications to be filed. Routine applications that are properly completed and contain all information required, including adequate volume documentation, will be processed promptly. We will begin processing refund applications before the February 28, 1991 deadline for filing claims.

(15) Is my refund taxable?

If the petroleum products were purchased by a business, the refund is taxable. In all cases, your refund amount will be reported to the IRS by the DOE. You should consult your tax advisor if you have any questions regarding this matter.

(16) I have received an oil overcharge refund in another proceeding. Am I still eligible for a Texaco refund?

Yes. In most cases, the receipt of another oil overcharge refund, including crude oil refunds, refined product refunds, and disbursements from a Stripper Well escrow account, does not affect an applicant's eligibility to receive a Texaco refund.

(17) How do I get further information?

You may obtain further information by calling our DOE Texaco refund hotline at (202) 586-2456 from a touchtone telephone or (202) 586-3056 from a rotary phone between the hours of 8:30 a.m. and 5:00 p.m. eastern time, or by writing to:

Texaco Inc. Refund Proceeding
Office of Hearings and Appeals
Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

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Appendix C—Texaco Affiliates and Subsidiaries Presumed Ineligible in the Texaco Refund Proceeding

Arbuckle Pipe Line Co.
Badger Pipe Line Co.
Bareboat Tankship Corp.
Bay Drilling Corp.
Boca Del Mar Inc.
Bridgeline Gas Distribution Co.
Caltex Petroleum Corp.
Colonial Pipe Line Co.
Dixie Pipe Line Co.
Explorer Pipe Line Co.
Getty Oil Co.
Getty Scientific Development Co.
The Harrison Corp.
Huelva Pyrties, Inc.
Iricon Agency Ltd.
KAW Pipe Line Co.
Knightbridge Corp.
LOCAP Inc.
Loop Inc.
Neches Gas Distributing Co. Inc.
Olympic Pipe Line Co.
Osage Pipe Line Co.
Paragon Oil Co., Inc.
Petrotomics Co.
The Pipe Lines of Puerto Rico.
Riverway Gas Pipe Line Co.
Sabine Pipe Line Co.
Seaboard Pipe Line Co.
Seville Metals Corp.
Skelly Leasing Co.
Thums Long Beach Co.
Vancouver Plywood Co.
Vanply, Inc.
West Shore Pipe Line Co.
White Fuel Corp.
Whitney Fuel Supply
Wolverine Pipe Line Co.

[FR Doc. 90-5605 Filed 3-9-90; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Department of the Army

[FRL-3732-3]

Memorandums of Agreement (MOA); Clean Water Act Section 404(b)(1) Guidelines; Correction

AGENCY: Environmental Protection Agency and Department of the Army.

ACTION: Notice; correction.

SUMMARY: This notice corrects a previously published notice (55 FR 5510; February 15, 1990) regarding a Memorandum of Agreement (MOA) between the Environmental Protection Agency and the Department of the Army that provides clarification and general guidance regarding the level of mitigation necessary to demonstrate compliance with the Clean Water Act section 404(b)(1) Guidelines. The previously published notice indicated that a copy of the MOA would be published as part of that notice. However, the actual text of the MOA was not in fact published. Consequently, we are correcting that notice by publishing the actual text of the MOA today; as well as re-publishing the original introductory language from the February 15, 1990 **Federal Register** notice.

DATES: The effective date of this MOA is February 7, 1990.

ADDRESSES: Copies of the MOA are available from:

Office of Wetlands Protection (A-104F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office of the Assistant Secretary of the Army, Department of the Army, Room 2E569, The Pentagon, Washington, DC 20310-0301.

Headquarters, U.S. Army Corps of Engineers, (CECW-OR), 20 Massachusetts Ave., NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Suzanne E. Schwartz of the Environmental Protection Agency at the address given above; telephone 202/475-7799, (FTS) 475-7799; or David Barrows of the Department of the Army at the address given above; telephone 202/695-1376, (FTS) 695-1376.

LaJuana S. Wilcher,
Assistant Administrator for Water.
Robert W. Page,
Assistant Secretary of the Army (Civil Works).

On November 15, 1989, the Environmental Protection Agency and the Department of the Army signed a Memorandum of Agreement (MOA) that provides clarification and general guidance regarding the level of mitigation necessary to demonstrate compliance with the Clean Water Act Section 404(b)(1) Guidelines ("the Guidelines"). The agencies developed the MOA in response to questions that had arisen with respect to mitigation requirements under the Guidelines applicable to the review of applications for standard Section 404 permits. The intent of the MOA is to improve consistency in the implementation of the Guidelines and to eliminate misunderstanding and confusion on the part of agency personnel. Accordingly, we anticipate that the MOA will increase the effectiveness of the Section 404 program by reducing delays in permit processing, minimizing ambiguity in the regulatory program and by providing agency field personnel with a clearer understanding of the procedures for determining appropriate and practicable mitigation under the Guidelines.

The Domestic Policy Council, through its Inter-Agency Task Force on Wetlands, of which both the Environmental Protection Agency and the Army Corps of Engineers are members, has been tasked by the President to develop recommendations regarding attainment of the goal of no net loss of the Nation's wetlands. While the Section 404 regulatory program, including this MOA, can contribute to the attainment of that goal, neither the 404 program nor this MOA establish a no net loss policy for the Nation's wetlands. In meeting this charter, the Task Force will hold a series of public meetings around the country to solicit public views on appropriate strategies for achieving the no net loss of wetlands goal, including both regulatory and non-regulatory approaches. These public meetings will also address specific issues such as losses associated with agricultural activities in wetlands, and losses in specific geographic areas such as the Mississippi River Delta and along the Louisiana Gulf coast. The Task Force will also consider the challenges posed in Alaska where a high proportion of developable land is wetlands and where technical difficulties exist regarding opportunities for compensatory mitigation. The Task Force will also address issues such as the important roles of state and local government and private conservation groups; the need to ensure maximum possible coordination between Section 404 permitting actions and other environmental laws, including the National Environmental Policy Act; the role of market based strategies; mitigation policy, including mitigation banking; and the role of legislation in achieving the goal. The MOA will be reconsidered in light of development of a comprehensive no net loss policy.

The MOA interprets and provides internal guidance and procedures to the Corps and EPA field personnel for implementing existing Section 404 permit regulations. The MOA does not change substantive regulatory requirements. Rather, it provides a procedural framework for considering mitigation, so that all Corps and EPA field offices will follow consistent procedures in determining the type and level of mitigation necessary to ensure compliance with the Section 404(b)(1) Guidelines. The MOA also maintains the flexibility of the Guidelines by expressly recognizing that no net loss of

wetlands functions and values may not be achieved in each and every permit action. Specifically, the MOA recognizes that compensatory mitigation may not be required if mitigation is not practicable (as defined in § 230.3(q) of the Guidelines), feasible or would result in only inconsequential environmental benefits. For example, in areas of the country where wetlands constitute a majority of the land type, minor losses of wetland functions may not need to be mitigated by offsite compensatory mitigation. In making this determination field personnel may consider, among other things, the nature of the wetlands functions, cumulative effects on the watershed or ecosystem and whether wetlands in the contiguous area are protected through public ownership or permanent easement. The MOA does not establish any new mitigation requirements beyond those currently found in the Guidelines or modify the Guidelines in any way.

Since signing the MOA, the agencies have conducted discussions with affected Federal agencies regarding the MOA. As a result of those discussions, and in an attempt to clarify the agencies' intent regarding the scope and effect of the MOA, specific changes have been made to the language of the MOA. A copy of this revised MOA is published with this notice.

Memorandum Of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines

I. Purpose

The United States Environmental Protection Agency (EPA) and the United States Department of the Army (Army) hereby articulate the policy and procedures to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines ("Guidelines"). This Memorandum of Agreement (MOA) expresses the explicit intent of the Army and EPA to implement the objective of the CWA to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, including wetlands. This MOA is specifically limited to the Section 404 Regulatory Program and is written to provide guidance for agency field personnel on the type and level of mitigation which demonstrates compliance with requirements in the Guidelines. The policies and procedures discussed herein are consistent with current Section 404 regulatory practices and are provided in response to questions that have been raised about how the Guidelines are implemented. The MOA does not change the substantive requirements of the Guidlines. It is intended to provide guidance regarding the exercise of discretion under the Guidelines.

Although the Guidelines are clearly applicable to all discharges of dredged or fill material, including general permits and Corps of Engineers (Corps) civil works projects, this MOA focuses on standard permits (33 CFR 325.5(b)(1).[1] This focus is intended solely to reflect the unique procedural aspects associated with the review of standard permits, and does not obviate the need for other regulated activities to comply fully with the Guidelines. EPA and Army will seek to develop supplemental guidance for other regulated activities consistent with the policies and principles established in this document.

This MOA provides guidance to Corps and EPA personnel for implementing the Guidelines and must be adhered to when considering mitigation requirements for standard permit applications. The Corps will use this MOA when making its determination of compliance with the Guidelines with respect to mitigation for standard permit applications. EPA will use this MOA in developing its positions on compliance with the Guidelines for proposed discharges and will reflect this MOA when commenting on standard permit applications.

II. Policy

A. The Council on Environmental Quality (CEQ) has defined mitigation in its regulations at 40 CFR 1508.20 to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. The Guidelines establish environmental criteria which must be met for activities to be permitted under Section 404.[2] The types of mitigation enumerated by CEQ are compatible with the requirements of the Guidelines; however, as a practical matter, they can be combined to form three general types: avoidance, minimization and compensatory mitigation. The remainder of this MOA will speak in terms of these more general types of mitigation.

B. The Clean Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions. In focusing the goal of no overall net loss to wetlands only, EPA and Army have explicitly recognized the special significance of the nation's wetlands resources. This special recognition of wetlands resources does not in any manner diminish the value of other waters of the United States, which are often of high value. All waters of the United States, such as streams, rivers, lakes, etc., will be accorded the full measure of protection under the Guidelines, including the requirements for appropriate and practicable mitigation. The determination of what level of mitigation constitutes "appropriate" mitigation is based solely on the values and functions of the aquatic resource that will be impacted. "Practicable" is defined at Section 230.3(q) of the Guidelines.[3] However, the level of mitigation determined to be appropriate and practicable under Section 230.10(d) may lead to individual permit decisions which do not fully meet this goal because the mitigation measures necessary to meet this goal are not feasible, not practicable, or would accomplish only inconsequential reductions in impacts. Consequently, it is recognized that no net loss of wetlands functions and values may not be achieved in each and every permit action. However, it remains a goal of the Section 404 regulatory program to contribute to the national goal of no overall net loss of the nation's remaining wetlands base. EPA and Army are committed to working with others through the Administration's interagency task force and other avenues to help achieve this national goal.

C. In evaluating standard Section 404 permit applications, as a practical matter, information on all facets of a project, including potential mitigation, is typically gathered and reviewed at the same time. The Corps, except as indicated below, first makes a determination that potential impacts have been avoided to the maximum extent practicable; remaining

[1] Standard permits are those individual permits which have been processed through application of the Crops public interest review procedures (33 CFR 325) and EPA's Section 404(b)(1) Guidelines, including public notice and receipt of comments. Standard permits do not include letters of permission, regional permits, nationwide permits, or programmatic permits.

[2] (except Section 404(b)(2) applies).

[3] Section 230.3(q) of the Guidelines reads as follows: "The term practicable means available and capable of being done after taking into consideration *cost, existing technology, and logistics in light of overall project purposes.*" (Emphasis supplied)

unavoidable impacts will then be mitigated to the extent appropriate and practicable by requiring steps to minimize impacts, and, finally, compensate for aquatic resource values. This sequence is considered satisfied where the proposed mitigation is in accordance with specific provisions of a Corps and EPA approved comprehensive plan that ensures compliance with the compensation requirements of the Section 404(b)(1) Guidelines (example of such comprehensive plans may include Special Area Management Plans, Advance Identification areas (Section 230.80), and State Coastal Zone Management Plans). It may be appropriate to deviate from the sequence when EPA and the Corps agree the proposed discharge is necessary to avoid environmental harm (e.g., to protect a natural aquatic community from saltwater intrusion, chemical contamination, or other deleterious physical or chemical impacts); or EPA and the Corps agree that the proposed discharge can reasonably be expected to result in environmental gain or insignificant environmental losses.

In determining "appropriate and practicable" measures to offset unavoidable impacts, such measures should be appropriate to the scope and degree of those impacts and practicable in terms of cost, existing technology, and logistics in light of overall project purposes. The Corps will give full consideration to the views of the resource agencies when making this determination.

1. Avoidance.[4] Section 230.10(a) allows permit issurance for only the least environmentally damaging, practicable alternative.[5] The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a) requires that no discharge shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact to the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites[6] are available and 2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evalaution of the least environmetnally dammaging praticable alternatives for the purposes of requirements under Section 230.10(a).

2. Minimization. Section 230.10(d) states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit conditions. Subpart H of the guidelines describes several (but not all) means for minimizing impacts of an activity.

3. Compensatory Mitigation. Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required. Compensatory actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands) should be undertaken, when practicable, in areas adjacent or contiguous to the discharge site (on-site compensatory mitigation). If on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area if practicable (i.e., in close physical proximity and, to the extent possible, the same watershed). In determining compensatory mitigation, the functional values lost by the resource to be impacted must be considered. Generally, in-kind compensatory mitigation is preferable to out-of-kind. There is continued uncertainty regarding the success of wetland creation or other habitat development. Therefore, in determining the nature and extent of habitat development of this type careful consideration should be given to its likelihood of success. Because the likelihood of success is greater and the impacts to potentially value uplands are reduced, restoration should be the first option considered.

In the situation where the Corps is evaluating a project where a permit issued by another agency requires compensatory mitigation, the Corps may consider that mitigation as part of the overall application for purposes of public notice, but avoidance and minimization shall still be sought.

Mitigation banking may be an acceptable form of compensatory mitigation under specific criteria designed to ensure an environmentally successful bank. Where a mitigation bank has been approved by EPA and the Corps for purposes of providing compensatory mitigation for specific identified projects, use of that mitigation bank for those particular projects is considered as meeting the objectives of Section II.C.3 of this MOA, regardless of the practicability of other forms of compensatory mitigation. Additional guidance on mitigation banking will be provided. Simple purchase or "preservation" of existing wetlands resources may in only exceptional circumstances be accepted as compensatory mitigation. EPA and Army will develop specific guidance for preservation in the context of compensatory mitigation at a later date.

III. Other Procedures

A. Potential applicants for major projects should be encouraged to arrange preapplication meetings with the Corps and appropriate federal, state or Indian tribal, and local authorities to determine requirements and documentation required for proposed permit evaluations. As a result of such meetings, the applicant often revises a proposal to avoid or minimize adverse impacts after developing an understanding of the Guidelines requirements by which a future Section 404 permit decision will be made, in addition to gaining an understanding of other state or tribal, or local requirements. Compliance with other statutes, requirements and reviews, such as NEPA and the Corps public interest review, may not in and of themselves satisfy the requirements prescribed in the Guidelines.

B. In achieving the goals of the CWA, the Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources. Measures which can accomplish this can be identified only through resource assessments tailored to the site performed by qualified professionals because ecological characteristics of each aquatic site are unique. Functional values should be assessed by applying aquatic site assessment techniques generally recognized by experts in the field and/or the best professional judgment of Federal and State agency representatives, provided such assessments fully consider ecological functions included in the Guidelines. The objective of mitigation for unavoidable impacts is to offset environmental losses. Additionally, for wetlands, such mitigation should provide, at a minimum, one for one functional replacement (i.e., no net loss

[4] Avoidance as used in the Section 404(b)(1) Guidelines and this MOA does not include compensatory mitigation.

[5] It is important to recognize that there are circumstances where the impacts of the project are so significant that even if alternatives are not available, the discharge may not be permitted regardless of the compensatory mitigation proposed (40 CFR 230.10(c)).

[6] Special aquatic sites include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle pool complexes.

of values), with an adequate margin of safety to reflect the expected degree of success associated with the mitigation plan, recognizing that this minimum requirement may not be appropriate and practicable, and thus may not be revelant in all cases, as discussed in Section II.B of this MOA.[7] In the absence of more definitive information on the functions and values of specific wetlands sites, a minimum of 1 to 1 acreage replacement may be used as a reasonable surrogate for no net loss of functions and values. However, this ratio may be greater where the functional values of the area being impacted are demonstrably high and the replacement wetlands are of lower functional value or the likelihood of success of the mitigation project is low. Conversely, the ratio may be less than 1 to 1 for areas where the functional values associated with the area being impacted are demonstrably low and the likelihood of success associated with the mitigation proposal is high.

C. The Guidelines are the environmental standard for Section 404 permit issuance under the CWA. Aspects of a proposed project may be affected through a determination of requirements needed to comply with the Guidelines to achieve these CWA environmental goals.

D. Monitoring is an important aspect of mitigation, especially in areas of scientific uncertainty. Monitoring should be directed toward determining whether permit conditions are complied with and whether the purpose intended to be served by the condition is actually achieved. Any time it is determined that a permittee is in non-compliance with mitigation requirements of the permit, the Corps will take action in accordance with 33 CFR Part 326. Monitoring should not be required for purposes other than these, although information for other uses may accrue from the monitoring requirements. For projects to be permitted involving mitigation with higher levels of scientific uncertainty, such as some forms of compensatory mitigation, long term monitoring, reporting and potential remedial action should be required. This can be required of the applicant through permit conditions.

E. Mitigation requirements shall be conditions of standard Section 404 permits. Army regulations authorize mitigation requirements to be added as special conditions to an Army permit to satisfy legal requirements (e.g., conditions necessary to satisfy the Guidelines) (33 CFR 325.4(a)). This ensures legal enforceability of the mitigation conditions and enhances the level of compliance. If the mitigation plan necessary to ensure compliance with the Guidelines is not reasonably implementable or enforceable, the permit shall be denied.

F. Nothing in this document is intended to diminish, modify or otherwise affect the statutory or regulatory authorities of the agencies involved. Furthermore, formal policy guidance on or interpretation of this document shall be issued jointly.

G. This MOA shall take effect on February 7, 1990, and will apply to those completed standard permit applications which are received on or after that date. This MOA may be modified or revoked by agreement of both parties, or revoked by either party alone upon six (6) months written notice.

Dated: February 6, 1990.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

LaJuana S. Wilcher,

Assistant Administrator for Water, U.S. Environmental Protection Agency.

[FR Doc. 90-5591 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-M

[7] For example, there are certain areas where, due to hydrological conditions, the technology for restoration or creation of wetlands may not be available at present, or may otherwise be impracticable. In addition, avoidance, minimization, and compensatory mitigation may not be practicable where there is a high proportion of land which is wetlands. EPA and Army, at present, are discussing with representatives of the oil industry, the potential for a program of accelerated rehabilitation of abandoned oil facilities on the North Slope to serve as a vehicle for satisfying necessary compensation requirements.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3732-9]

Science Advisory Board; Core Research Plan Reviews; Open Meetings

Under Public Law 92-463, notice is hereby given that the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) will conduct three separate meetings to review Core Research Strategies developed by the Agency's Office of Research and Development (ORD). Information concerning these reviews is given below. The meetings are open to the public. Copies of the ORD Core Research documents discussed in this notice will be available from Ms. Jane Metcalfe, U.S. EPA, ORD, Tel. (202) 382-7669, approximately two weeks prior to the meeting. The Core Research documents are not available from the Science Advisory Board.

Meeting Summaries—Ecology Core Research Review: The Ecological Processes and Effects Committee (EPEC) will meet on April 2-3, 1990 at the Holiday Inn, 1000 Sully Road, Sterling, Virginia 22710. The meeting will begin at 9 a.m. on April 2, 1990 and adjourn no later than 5 p.m. on April 3, 1990. The Committee will review the ecological core research document "Ecological Risk Assessment Program". For this review, the Designated Federal Official is Dr. Edward S. Bender and the Staff Secretary is Mrs. Frances Dolby.

Health Core Research Review: The Environmental Health Committee (EHC) will meet on April 4-5, 1990 in Room 908 West Tower, U.S. EPA Headquarters, 401 M Street SW., Washington, DC 20460. The meeting will start at 9 a.m. on April 4, 1990 and will adjourn no later than 5 p.m. on April 5, 1990. The Committee will review the health core research document "Core Research Proposal for Health Risk Assessment". For this review, the Designated Federal Official is Mr. Sam Rondberg and the Staff Secretary is Mrs. Mary Winston.

Risk Reduction Core Research Review: The Environmental Engineering Committee (EEC) will meet on April 11, 1990 in Room 735 East Tower, and on April 12, 1990 in Room 908 West Tower, both rooms at U.S. EPA Headquarters, 401 M Street SW., Washington, DC 20460. The meeting will start at 9 a.m. on April 11, 1990 and will adjourn no later than 5 p.m. on April 12, 1990. The Committee will review the risk reduction core research document "Risk Reduction Core Research Summary". For this review, the Designated Federal Official is Dr. K. Jack Kooyoomjian and the Staff Secretary is Mrs. Marcy Jolly.

For Further Information—Agendas for each meeting are available from the SAB Staff Secretary listed for that meeting at the address and phone number given below. For further information concerning a specific review, please contact the SAB Designated Federal Official listed for that review at the address and phone number given below. Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Tel. (202-382-2552), FAX (202-475-9693). Seating at the meetings is on a first come basis.

Anyone wishing to make a presentation at the meeting must forward a written statement to the appropriate Designated Federal Official at least five (5) business days prior to the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral

presentation will be limited to a total time of ten minutes.

Dated: March 6, 1990.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 90-5592 Filed 3-9-90; 8:45 am]

BILLING CODE 6450-01-M

[OPP-50699; FRL-3714-6]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.R. Butts International, Inc., representing First Mississippi Corp., a notification of intent to conduct small-scale field testing in California and Washington of a strain of *Ampelomyces quisqualis* isolated from powdery mildew infecting *Catha edulis* (Arabian-tea) in Israel.

DATES: Comments must be received on or before March 26, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from E.R. Butts, International, Inc., for the First Mississippi Corp. of Jackson, MS. The purpose of the proposed testing is to evaluate the efficacy of a nonindigenous strain of *Ampelomyces quisqualis* for the control of powdery mildew on apples and grapes. The proposed field tests would be conducted at four locations in California and at two locations is the State of Washington. The total area of the proposed test sites is less than 10 acres.

Dated: March 5, 1990.

Anne E. Lindsay,

Director, Registration Division (H7505C), Office of Pesticide Programs.

[FR Doc. 90-5593 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-50698; FRL-3714-5]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.R. Butts International, Inc., representing Kemira Oy, a notification of intent to conduct small-scale field testing in Virginia of a strain of *Streptomyces griseoviridis* isolated from peat in Finland.

DATES: Comments must be received on or before March 26, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from E.R. Butts, International, Inc., for Kemira Oy of Helsinki, Finland. The purpose of the proposed testing is to evaluate the efficacy of a nonindigenous strain of *Streptomyces griseoviridis* for control of *Fusarium*-incited damping-off of tomato and/or tobacco and radish plants. The proposed field tests would be conducted at three locations in the State of Virginia. The total area of the test sites is less than 10 acres.

Dated: March 5, 1990.

Anne E. Lindsay,

Director, Registration Division (H-7505C), Office of Pesticide Programs.

[FR Doc. 90-5594 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-59281; FRL 3715-6]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR

21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 4 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES:

Written comments by:

T 90-5, March 9, 1990.

T 90-6, T 90-7, T 90-8 March 15, 1990.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59280)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 90-5

Close of Review Period. March 23, 1990.

Manufacturer. Confidential.

Chemical. (G) Polymer of a fat and heterocyclic substituted olefin.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: None species (Rabbit).

T 90-6

Close of Review Period. March 29, 1990.

Importer. Confidential.

Chemical. (G) Substituted triphenylmethane.

Use/Import. (G) A component of the material for fabrication. Import range: Confidential.

T 90-7

Close of Review Period. March 29, 1990.

Importer. Confidential.

Chemical. (G) Substituted triphenylmethane.

Use/Import. (G) A component of the material for fabrication. Import range: Confidential.

T 90-8

Close of Review Period. March 29, 1990.

Importer. Confidential.

Chemical. (G) Substituted triphenylmethane.

Use/Import. (G) A component of the material for fabrication. Import range: Confidential.

Dated: March 5, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-5596 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-59280A; FRL 3715-8]

Certain Chemical; Approval Of A Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-90-2. The test marketing conditions are described below.

EFFECTIVE DATE: March 5, 1990.

FOR FURTHER INFORMATION CONTACT: Andrea Pfahles-Hutchens, New Chemicals Branch, Chemcial Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460 (202) 382-2255.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-2. EPA has determined that test marketing of the new chemical sustance described below, under the conditions set forth in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of custormers must not exceed that specified in the application and in this notice must be met.

The following additional restrictions apply to TME-90-2: A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the appliacant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-90-2

Date of Receipt: January 23, 1990.

Notice of Receipt: February 26, 1990 (55 FR 6679).

Applicant: Confidential.

Chemical: (G) Amines, bis(hydrogenated tallow alkyl)methyl, dioleates.

Use: (G) Fabric softener and antistatic agent.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any reasonable risk of injury to health or the envrionment.

Dated: March 5, 1990.

John Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-5597 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-59883; FRL 3715-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13,1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 23 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90-106, February 14, 1990.
Y 90-112, February 26, 1990.
Y 90-115, March 4, 1990.
Y 90-116, March 6, 1990.
Y 90-117, 90-118, 90-119, 90-120, 90-121, 90-122, 90-123, March 12, 1990.
Y 90-124, 90-125, 90-126, 90-127, 90-128, 90-129, March 13, 1990.
Y 90-130, March 14, 1990.
Y 90-131, 90-132, 90-133, 90-134, 90-135, March 19, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90-106

Manufacturer. Freeman Chemical Corporation.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Unsaturated polyester gel coat base resin. Prod. range: 125,000-250,000 kg/yr.

Y 90-112

Manufacturer. Freeman Chemical Corporation.
Chemical. (G) Chain-stopped alkyd resin.
Use/Production. (S) Resin compound of high-solids baking alkyd. Prod. range: 40,000-60,000 kg/yr.

Y 90-115

Importer. MTC America, Inc.
Chemical. (G) 1,3-Benzene dicarboxylic acid polymer with 1,3-diisocyanotomethylbenzene, 2-(2-hydroxyethoxy)ethano, 2-eyhtl-2(hydroxymethyl)-1-3-propanediol, 1,1-((1-methylethylidene)-bis-(4,-1-phenyleneoxy)-bis-(2-propanol).
Use/Import. (S) Toner binder. Import range: Confidential.

Y 90-116

Manufacturer. Confidential.
Chemical. (G) Epoxy ester polymer.
Use/Production. (S) Protective coating. Prod. range: 363,000-545,000 kg/yr.

Y 90-117

Importer. Confidential.
Chemical. (G) Modified polybutylene terephtalene.
Use/Import. (G) Fiber binder. Import range: Confidential.

Y 90-118

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Air dry enamel. Prod. range: Confidential.

Y 90-119

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Baking enamel. Prod. range: Confidential.

Y 90-120

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Baking enamel. Prod. range: Confidential.

Y 90-121

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Baking enamel. Prod. range: Confidential.

Y 90-122

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Baking enamel. Prod. range: Confidential.

Y 90-123

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester resin alkyd.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 90-124

Importer. Confidential.
Chemical. (G) Polyester polyol.
Use/Import. (G) Polyurethane resin. Import range: Confidential.

Y 90-125

Importer. Confidential.
Chemical. (G) Modified polybutylene terephthalate.
Use/Import. (G) Fiber binder. Import range: Confidential.

Y 90-126

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Copolyester.
Use/Production. (G) General purpose molding resin. Prod. range: Confidnetial.

Y 90-127

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Copolyester.
Use/Production. (G) General purpose molding resin. Prod. range: Confidential.

Y 90-128

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Copolyester.
Use/Production. (G) General purpose molding resin. Prod. range: Confidential.

Y 90-129

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Copolyester.
Use/Production. (G) General pupose molding resin. Prod. range: Confidential.

Y 90-130

Manufacturer. Confidential.
Chemical. (G) Polymers of alkaline glycols, benzene dicarboxylic acid and maleic anhydride.
Use/Production. (G) Degree of containment-open nondispersive use. Prod. range: Confidential.

Y 90-131

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 90-132

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 90-133

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic copolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 90-134

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 90-135

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (G) Open nondispersive. Prod. range: Confidential.

Dated: March 5, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-5598 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-D

EXPORT-IMPORT BANK

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States Congress.

TIME AND PLACE: Tuesday, March 27, 1990, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Financial Report, Congressional Review, Arrangement Tied Aid Credit Status, Assignments and Subcommittees, and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871, not later than March 26, 1990. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to March 22, 1990, the Office of the Secretary, room 935, 811 Vermont Avenue, Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 90-5533 Filed 3-9-90; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011250-001

Title: ELMA/Lloyd Slot Charter Agreement.

Parties: Empresa Lineas Maritimas Argentinas S.A., Companhia De Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment would change the name of the Agreement from Companhia De Navegacao Lloyd Brasileiro and Empresa Lineas Maritimas Argentina S.A. Slot Charter Agreement to Empresa Lineas Maritimas Argentinas S.A. and Companhia De Navegacao Lloyd Brasileiro Slot Charter Agreement. Also the amendment would omit the words "between," "on the one hand," and "on the other hand" from the geographic scope and would insert the words "to/from." It also makes other nonsubstantive changes.

Agreement No.: 203-011274

Title: Farrell/ISC-Waterman Cooperative Working Agreement.

Parties: Farrell Lines Incorporated, International Shipholding Corp., Waterman Steamship Corporation.

Synopsis: The Agreement provides that Farrell will not oppose an application of Waterman now pending before the Maritime Administration in Docket No. S-859. Also, neither Waterman nor ISC will operate U.S.-flag ocean common carrier service between the U.S. Atlantic Coast and the Mediterranean Sea except to Egypt, until December 31, 1996, or for as long as Farrell serves in the trade, whichever is earlier.

By Order of the Federal Maritime Commission.

Dated: March 6, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-5482 Filed 3-9-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 29. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 4 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Community Reinvestment Act Guidelines and Rating System.* Discussion led by Community Reinvestment Act (CRA) Committee, following staff update, on guidelines, to be issued by the Federal Financial Institutions Examination Council, on the public disclosure of CRA ratings and the preparation of written CRA evaluations for public consumption; and revisions to the Uniform Interagency CRA Assessment Rating System.

2. *Electronic Delivery of Government Benefits.* Discussion led by Depository and Delivery Systems Committee on the merits of developing programs that use electronic technology to distribute government benefits to recipients and reviewing the current regulatory framework for possible impediments.

3. *Implementation of the Home Mortgage Disclosure Act Amendments.* Discussion led by Community Affairs and Housing Committee on the HMDA disclosure statements that the FFIEC will prepare (and that lenders will make available to the public) summarizing

each individual lender's Loan/Application Register data, in addition to aggregate tables showing lending patterns for each metropolitan statistical area (which are made available at central data depositories located in each MSA).

4. *Mortgage Lending.* Discussion led by Community Affairs and Housing Committee regarding the geographic distribution of mortgage lending, to identify initiatives that could be taken to ensure that banking institutions address the mortgage credit needs of all neighborhoods in the communities they serve.

5. *Advertising Requirements for Revolving Credit.* Discussion led by Consumer Credit Committee on advertising issues related to revolving credit such as the appropriateness of merchants' advertising the minimum period payment without giving the annual percentage rate and other cost information.

6. *Members' Forum.* Presentation of individual Council members' views regarding whether consumers might be willing to accept a system of basic deposit insurance for smaller accounts, with additional coverage available, for a premium, to those with larger amounts on deposit; and ways to increase the nation's savings, including tax incentives, educational programs, and special savings products.

7. *Committee Reports.* Reports from Council committees on their work plans for the upcoming year.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statemenrs to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, March 23, and must be of quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, 202-452-2412. Telecommunications Device for the Deaf (TDD) users may contact Earnestine Hill or Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System, March 6, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-5561 Filed 3-9-90; 8:45 am]

BILLING CODE 6210-01-M

Bergen Bank A/S, Bergen, Norway; Acquisition of Companies Engaged in Nonbanking Activities

Bergan Bank A/S, Bergen, Norway ("Applicant" or "Bergen"), has applied, pursuant to section 4(a)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8) ("BHC Act") and § 225.23(a)(2) and (3) of the Board's Regulation Y (12 CFR 225.23(a)(2) and (3)), to acquire, as part of the merger of Bergen with Den norske Creditbank, Oslo, Norway ("DnC"), 100 percent of the outstanding shares of DnC US Finance, New York, New York, and DnC America Inc., New York, New York. DnC America Inc. is the holding company for DnC America Banking Corporation, New York, New York, ("DnCA"), an investment company organized under Article XII of the New York Banking Law ("Article XII investment company") which has two wholly-owned subsidiaries, DnC Leasing International Inc., New York, New York ("DnC Leasing"), and DnC Capital Corporation, New York, New York ("DnC Capital"). Bergen would engage through these companies in the issuance of commercial paper, leasing transactions, financial advisory activities, and certain activities permissible for Article XII investment companies. These activities, which are described more fully below, will be conducted throughout the United States.

Applicant states that DnCA will engage in the following activities:

(1) Borrowing and leanding money, with or without real or personal security; acting as principal or agent in purchasing, discounting, acquiring, investing in, selling and disposing of bills of exchange, drafts, notes, acceptances and other obligations for the payment of money; and, acting as principal or agent in purchasing, acquiring, investing in, servicing, selling and disposing of, and making loans upon the security of, bonds and mortgages of real property;

(2) Accepting bills of exchange or drafts drawn upon it; issuing letters of credit; and buying and selling coin, bullion and exchange;

(3) With the approval, and subject to regulations, of the Banking Board of the State of New York, (a) maintaining a branch in the Cayman Islands, which (with limited deposit-taking powers) engages in the business of receiving deposits outside the United States and makes Eurodollar-based loans, and (b) receiving money for transmission and transmitting the same to and from the United States;

(4) Receiving and maintaining credit balances incidental to, or arising out of, the exercise of its lawful powers;

(5) Purchasing, acquiring, investing in and holding stock of any corporation and selling and disposing of such stock, provided that (unless otherwise authorized by the Board) no such investment will exceed 5 percent of any class of voting securities of any corporation;

(6) Owning 20 percent of the voting shares of an investment company;

(7) Owning and operating DnC Leasing and DnC Capital.

With respect to activity (7), Applicant states that through DnC Leasing DnCA will engage in leasing transactions and commercial lease financing activities. The leasing transactions will be of a type permissible for bank holding company affiliates pursuant to regulation.

Through DnC Capital, the second subsidiary of DnCA, Applicant proposes to offer and provide the following:

(i) Advice in connection with merger, acquisition/divestiture and financing transactions for non-affiliated financial and nonfinancial institutions;

(ii) Fairness opinions on connection with merger, acquisition and similar transactions for non-affiliated financial and nonfinancial institutions and;

(iii) Valuations for non-affiliated financial and nonfinancial institutions.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that its proposed activities are "'so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined by Order that DnCA's activities (1) through (4) are closely related to banking and permissible for bank holding companies under section 4(c)(8) of the BHC Act. *See Bergen Bank,* 72 Federal Reserve Bulletin 200 (1986); *The Industrial Bank of Japan,* 72 Federal Reserve Bulletin 71 (1986); *Skandinaviska Enskilda Banken,* 69 Federal Reserve Bulletin 42 (1983); *European American Bancrop,* 63 Federal Reserve Bulletin 595 (1977).

Activity (5), which DnCA engages in directly and indirectly through DnC Capital, is permissible under section 4(c)(6) of the BHC Act (12 U.S.C. 1843(c)(6)).

The leasing transactions and commercial lease financing activities of DnC Leasing are permissible under § 225.25(b)(5) of Regulation Y, and Applicant commits that Dnc Leasing will conform its leasing activities to the conditions of that section in conducting such activities. The commercial lease financing activities are permissible under § 225.25(b)(1) of Regulation Y.

The Board has previously determined by Order that all of the financial advisory activities engaged in by DnC Capital are closely related to banking and permissible for bank holding companies under section 4(c)(8) of the BHC Act. *See, e.g., The Nippon Credit Bank, Ltd.*, 75 Federal Reserve Bulletin 308 (1989); *Canadian Imperial Bank of Commerce ("CIBC"), 74* Federal Reserve Bulletin 571 (1988); *Suntrust Banks, Inc.*, 75 Federal Reserve Bulletin 256 (1988); *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987). Applicant states that in conducting these activities DnC Capital will comply with the conditions relied upon by the Board in the *CIBC* and *Suntrust* orders, as they modified the conditions relied upon in the *Signet* order.

Applicant proposes to engage in activity (6) pursuant to section 4(c)(7) of the BHC Act, which permits bank holding companies to acquire shares of investment companies that engage solely in acquiring 5 percent or less of the securities of other companies. DnCA owns a nonvoting equity interest in 20 percent of the common shares of N.A.B. Nordic Investors Limited N.V. ("NAB"), a closed-end investment company incorporated in Curacao. NAB's sole business is investing in securities in amounts not more than 5 percent of the voting shares of any company.

In addition, Bergen proposes to merge the commercial paper program of DnC US Finance, a direct subsidiary of DnC, with that of Bergen's wholly-owned subsidiary, Bergen Bank Corporation. DnC US Finance issues commercial paper in the United States, the net proceeds of which are deposited with or loaned to DnC or its subsidiaries. Bergen states that this activity is permissible as a "servicing" activity under section 4(c)(1)(C) of the BHC Act and § 225.22(a) of Regulation Y because the purpose is to provide liquidity and funds to (or "perform services for") DnC and its subsidiaries. Bergen further states that while section 4(c)(1)(C) of the BHC Act by its terms refers only to the provision of services to a bank holding company's banking subsidiaries, the Board in § 225.22(a)(1) of Regulation Y has interpreted this "servicing" exemption as allowing the provision of services for both banking *and* nonbanking subsidiaries. *See* 1 F.R.R.S. ¶¶ 4-293, 4-672, 4-298; *see also* Heller, *Federal Bank Holding Company Law*, ¶ 4.02(2) at 4-15.

Applicant takes the position that the proposed acquisitions will benefit the public. It argues that the merger will lead to reduced costs, increased earnings, and easier access to equity capital that will provide a basis for a financially stronger bank. It states that customers, employees and shareholders of Bergen and DnC will benefit from the merger because the resulting entity can remain active in the New York banking market. Moreover, as a result of the merger, the parent company will present a source of financial strength to its subsidiaries. The resulting cost efficiencies will permit the provision of products and services to customers on more competitive terms. Applicant also believes that the potential risks and conflicts from engaging in these activities are not different from those arising in other applications approved by the Board because Applicant has committed to conduct the proposed activities subject to the same conditions imposed by the Board in orders approving similar activities.

Any comments or requests for hearings should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 17, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5558 Filed 3-9-90; 8:45 am]

BILLING CODE 6210-01-M

Chalybeate Springs Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 30, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Chalybeate Springs Corporation*, Hughes Springs, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Hughes Springs, Hughes Springs, Texas.

Board of Governors of the Federal Reserve System, March 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5556 Filed 3-9-90; 8:45 a.m.]

BILLING CODE 6210-01-M

Dr. Gerhard T. Schmunck, et al.; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 26, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dr. Gerhard T. Schmunck;* Messrs. Larry D. Williams; Ray Meier; Richard D. Kelly; Chris Hansen; Larry Henson; and Daniel Condon; to acquire 100 percent of the voting shares of DeWitt Bancorp, Inc., DeWitt, Iowa, and thereby indirectly acquire DeWitt Bank and Trust, DeWitt, Iowa.

Board of Governors of the Federal Reserve System, March 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5557 Filed 3-9-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTION GRANTED EARLY TERMINATION BETWEEN: 022090 AND 230290

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
CS First Boston, Inc., The Venture, The Venture	90-0936	02/20/90
International, Business Machines Corporation, The Venture, The Venture	90-0937	02/20/90
AMSCO International, Inc., TRW Inc. Medical Electronics unit	90-0938	02/20/90
Jay C. Self, The May Department Stores Company, May Centers, Inc.	90-0768	02/21/90
Jay C. Self, Prudential Insurance Company of America, May Centers, Inc.	90-0769	02/21/90
Mark A. Thompson, The May Department Stores Company, May Centers, Inc.	90-0782	02/21/90
Mark A. Thompson, Prudential Insurance Company of America, May Centers, Inc.	90-0783	02/21/90
Arbed S.A., Square D Company, Yates Industries, Inc.	90-0904	02/21/90
The Furukawa Electric Co., Ltd., Square D Company, Yates Industries, Inc.	90-0905	02/21/90
Crane Co., Acadia Partners, L.P., Lear Romec Corp.	90-0917	02/21/90
CIBA-GEIGY Limited, Biotrack, Inc., Biotrack, Inc.	90-0997	02/21/90
PageAmerica Group, Inc., NYNEX Corporation, NYNEX Mobile Communications Company	90-0866	02/22/90
The Berkshire Fund, America's Best Contacts and Eyeglasses, Inc., America's Best Contacts and Eyeglasses, Inc.	90-0942	02/22/90
Compagnie de Navigation Mixte, Florida Progress Corporation, Talquin Corporation	90-0947	02/22/90
Pennzoil Company, Proven Properties Inc., Proven Properties Inc.	90-0956	02/22/90
North Shore Regional Health Service Corp., The Community Hospital at Glen Cove, The Community Hospital at Glen Cove	90-0927	02/26/90
Addington Resources, Inc., Erskine Bronson Ingram, Johns Creek Coal Company	90-0941	02/26/90
The Morgan Stanley Leveraged Equity Fund II, L.P., Freeport-McMoRan Inc., Freeport-McMoRan Resources Partners	90-0980	02/26/90
ARTRA GROUP Incorporated, Peter R. Harvey, BCA Holdings, Inc.	90-0992	02/26/90
General Motors Corporation, Anchor Savings Bank FSB, Residential Funding Corporation	90-1002	02/26/90
Digital Communications Associates, Inc., Pacific Data Products, Inc., Pacific Data Products, Inc.	90-1003	02/26/90
Tokyu Department Store Co., Ltd., Mrs. Caroiina W. Barrie, The Barrie Family Investment Corporation	90-1013	02/26/90
The Mitsui Bank, Limited, The Taiyo Kobe Bank, Limited, The Taiyo Kobe Bank, Limited	90-1016	02/26/90
Marlis S.A., Ronald E. Scherer, United Magazine Company	90-1032	02/26/90
Hanny Magnetics Limited, Anacomp, Inc., Xidex Corporation	90-0918	02/27/90
Enron Corp., CSX Corporation, CSX Energy Corporation	90-0935	02/27/90
Utilitech, Incorporated, United Merchants and Manufacturers, Inc., United Merchants and Manufacturers, Inc.	90-0931	02/28/90
Thypin Steel Company, Inc., The Eastern Steel & Metal Company, The Eastern Steel & Metal Company	90-0932	02/28/90
Amerada Hess Corporation, SB Special Investments Holding Company, SB Special Investments Holding Company	88-0990	02/29/90
Freedom Forge Corporation, ATI Holding, Inc., ATI Holding, Inc.	90-0943	03/01/90
Clark Equipment Company, Mr. Robert N. Masucci, Drexel Industries, Inc.	90-0945	03/01/90
Procordia AB, R.T. McLain, Bunte General Corporation	90-0983	03/01/90
United Machinery Group Ltd., The Black & Decker Corporation, Texon Footwear Inc.	90-0986	03/01/90
Pioneer Chlor Alkali Investments, Inc., All-Pure Chemical Co, All-Pure Chemical Co	90-0988	03/01/90
MAN Aktiengesellschaft, Rockwell International Corporation, Rockwell Graphic Systems, Inc.	90-1006	03/01/90
Noel Group, Inc., Global Natural Resources, Inc., Global Natural Resources, Inc.	90-1014	03/01/90
Hanson PLC, Newmont Mining Corporation, Peabody Holding Company, Inc.	90-1015	03/01/90
Aktiebolaget SKF, IFINT S.A., IFINT-CR Inc. (Chicago Rawhide Manufacturing Co.)	90-1021	03/02/90
Household International, Inc., Dollar Dry Dock Bank, Dollar Dry Dock Bank	90-1024	03/02/90
OMI Corp., Chiles-Alexander International, Inc., Chiles-Alexander International, Inc.	90-1026	03/02/90
A. Richard Benedek, Lawrence A. Busse, WEAU-TV	90-1037	03/02/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Federal Trade Commissoin Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-5563 Filed 3-9-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Ergonomic Analysis of Tool Handle Design for Reducing Grip Forces; Meeting

Name: Ergonomic Analysis of Tool Handle Design for Reducing Grip Forces.

Time and Date: 9 a.m.-2:30 p.m., March 26, 1990.

Place: Robert A. Taft Laboratories, NIOSH, CDC, Room B-28, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol to study the effects of tool handle shape and size on grip force while performing simulated industrial tasks.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Monica J. Milliron, NIOSH, CDC, 4676 Columbia Parkway, Mail Stop C-24, Cincinnati, Ohio 45226, Telephone: Commercial (513) 533-8291, FTS: 684-8291.

Dated: March 6, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-5568 Filed 3-9-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 90E-0043]

Determination of Regulatory Review Period for Purposes of Patent Extension; Toradol®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Toradol® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Toradol® (ketorolac tromethamine) which is indicated for the short-term management of pain. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Toradol® (U.S. Patent No. 4,089,969) from Syntex (U.S.A.) Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated February 8, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, ketorolac tromethamine, represented the first permitted commercial marketing or use of the active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Toradol® is 2,442 days. Of this time, 1,549 days occurred during the testing phase of the regulatory review period, while 893 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* March 27, 1983. The applicant claims April 2, 1983, as the date the investigational new drug (IND) application for Toradol® became effective. However, FDA records indicate that the IND became effective on March 27, 1983.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* June 22, 1987. The applicant claims June 19, 1987, as the date the new drug application (NDA) for Toradol® (NDA 19-698) was initially submitted. However, FDA records indicate that the application was not received until June 22, 1987.

3. *The date the application was approved:* November 30, 1989. FDA has verified the applicant's claim that NDA 19-698 was approved on November 30, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 11, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 10, 1990, for a determination regarding whether the

applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90–5546 Filed 3–9–90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0042]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zefazone.®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Zefazone® and its publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Zefazone® (cefmetazole sodium sterile powder) which is indicated in the treatment of urinary tract infections either complicated or uncomplicated, lower respiratory tract infections, skin and skin structure infections, and intraabdominal infections. Subsequent to this approval, the Patent Office received a patent term restoration application for Zefazone® (U.S. Patent No. 4,297,488) from Merck & Co., Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated February 8, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, cefmetazole sodium sterile powder, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Zefazone® is 2,404 days. Of this time, 1,692 days occurred during the testing phase of the regulatory review period, while 712 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 15, 1983. The applicant claims the investigational new drug (IND) application for Zefazone® became effective on May 26, 1983. However, *FDA* records indicate that the *IND* became effective on May 15, 1983.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act:* December 31, 1987. The applicant claims that the new drug application (NDA) for Zefazone® (NDA 50–637) was initially submitted on December 30, 1987. However, FDA records indicate that the application was not received until December 31, 1987.

3. *The date the application was approved:* December 11, 1989. FDA has verified the applicant's claim that NDA 50–637 was approved on December 11, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 11, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 10, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90–5547 Filed 3–9–90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Working Group in Indian Water Settlements; Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims

AGENCY: Department of the Interior.

ACTION: Policy Statement.

SUMMARY: It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation. Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlement of claims concerning Indian water resources.

EFFECTIVE DATE: March 12, 1990.

ADDRESSES: Comments may be addressed to: Mr. Tim Glidden, Department of the Interior, MS 6217-MIB, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Glidden, Chairman, Working Group on Indian, Water Settlements, 202-343-7351.

SUPPLEMENTARY INFORMATION: These criteria and procedures were developed by the Working Group on Indian Water Settlements from the Department of the Interior.

These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Dated: March 6, 1990.

Timonthy Glidden,

Chairman, Working Group on Indian Water Settlements.

Criteria and Procedures for Indian Water Rights Settlements

Preamble

Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians.

It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation.

Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlements of claims concerning Indian water resources. These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Criteria

1. These criteria are applicable to all negotiations involving Indian water rights claims settlements in which the Federal Government participates. Claims to be settled through negotiation may include, but are not limited to, claims:

(a) By tribes and U.S. Government to quantify reserved Indian water rights.

(b) By tribes against the U.S. Government.

(c) By tribes and the U.S. Government against third parties.

2. The Department of the Interior will support legislation authorizing those agreements to which is is a signatory party.

3. Settlements should be completed in such a way that all outstanding water claims are resolved and finality is achieved.

4. The total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government.

5. Federal contributions to a settlement should not exceed the sum of the following two elements:

a. First, calculable legal exposure—litigation cost and judgment obligations if the case is lost; Federal and non-Federal exposure should be calculated on a present value basis taking into account the size of the claim, value of the water, timing of the award, likelihood of loss.

b. Second, additional costs related to Federal trust or programmatic responsibilities (assuming the U.S. obligation as trustee can be compared to existing precedence.)—Federal contributions relating to programmatic responsibilities should be justified as to why such contributions cannot be funded through the normal budget process.

6. Settlements should include non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties.

7. Settlements should be structured to promote economic efficiency on reservations and tribal self-sufficiency.

8. Operating capabilities and various resources of the Federal and non-Federal parties to the claims negotiations should be considered in structuring a settlement (e.g. operating criteria and water conservation in Federal and non-Federal projects).

9. If Federal cash contributions are part of a settlement and once such contributions are certified as deposited in the appropriate tribal treasury, the U.S. shall not bear any obligation or liability regarding the investment, management, or use of such funds.

10. Federal participation in Indian water rights negotiations should be conducive to long-term harmony and cooperation among all interested parties through respect for the sovereignty of the States and tribes in their respective jurisdictions.

11. Settlements should generally not include:

a. Local contributions derived from issuing bonds backed by or guaranteed by the Federal Government.

b. Crediting to the non-Federal share normal project revenues that would be received in absence of a cost share agreement.

c. Crediting non-Federal operation, maintenance, and rehabilitation (OM&R) payments to non-Federal construction cost obligations.

d. Imposition by the Federal Government of fees or charges requiring

authorization in order to finance the non-Federal share.

e. Federal subsidy of OM&R costs of Indian and non-Indian parties.

f. U.S. participation in an economically unjustified irrigation investment; however investments for delivery of water for households, gardens, or domestic livestock may be exempted from this criterion.

g. Per-Capita distribution of trust funds.

h. Crediting to the Federal share existing annual program funding to tribes.

i. Penalties for failure to meet a construction schedule. Interest should not accrue unless the settlement does not get budgeted for as specified in item 15 below.

j. Exemptions from Reclamation law.

12. All tangible and intangible costs to the Federal Government and to non-Federal parties, including the forgiveness of non-Federal reimbursement requirements to the Federal Government and items contributed per item 8 above, should be included in calculating their respective contributions to the settlement.

13. All financial calculations shall use a discount rate equivalent to the current water resources planning discount rate as published annually in the **Federal Register**.

14. All contractual and statutory responsibilities of the Secretary that affect or could be affected by a specific negotiation will be reviewed.

15. Settlement agreements should include the following standard language: Federal financial contributions to a settlement will normally be budgeted for, subject to the availability of funds, by October 1 of the year following the year of enactment of the authorizing legislation (e.g., for a settlement enacted into law in August 1990, funding to implement it would normally be contained in the FY 1992 Budget request and, if appropriated, be available for obligation on October 1, 1991).

16. Settlements requiring the payment of a substantial Federal contribution should include standard language providing for the costs to be spread-out over more than one year.

Procedures

Phase I—Fact Finding

1. The Department of the Interior (Department) will consider initiation of formal claims settlement negotiations when the Indian tribe and non-Federal parties involved have formally requested negotiations of the Secretary of the Interior (Secretary).

2. The Department will consult with the Department of Justice (Justice) concerning the legal considerations in forming a negotiating team.

If Department decides to establish a team, the Office of Management and Budget (OMB) and Justice shall be notified, in writing. Justice should generally be a member of any negotiating team.

a. The Department's notification should include the rationale for potential negotiations, i.e., pending litigation and other background information about the claim already available, makeup of the team (reason that Justice is not a member of a team, if applicable), and non-Federal participants in the settlement process.

b. The date of the notification marks the beginning of the fact-finding period.

3. Not later than nine months after notification, a fact-finding report outlining the current status of litigation and other pertinent matters will be submitted by the team to the Department, OMB, and Justice. The fact-finding report should contain information that profiles the claim and potential negotiations. The report should include:

a. A listing of all involved parties and their positions.

b. The legal history, if any, of the claim, including such relevant matters as prior or potential litigation or court decisions, or rulings by the Indian Claims Commission.

c. A summary and evaluation of the claims asserted for the Indians.

d. Relevant information on the non-Federal parties and their positions to the claim.

e. A geographical description of the reservation and drainage basin involved, including maps and diagrams.

f. A review and analysis of pertinent existing contracts, statutes, regulations, and legal precedent that may have an impact on the settlement.

g. A description and analysis of the history of the United States' trust activities on the Indian reservation.

4. During Phases I, II, and III, the Government (through the negotiating team or otherwise) will not concede or make representatives on likely U.S. positions or considerations.

Phase II—Assessment and Recommendations

1. As soon as possible, the negotiating team, in concert with Justice, will conduct and present to the Department an assessment of the positions of all parties, and a recommended negotiating position. The purpose of the assessment is to (1) measure all costs presuming no settlement, and (2) measure complete settlement costs to all of the parties. The assessment should include:

a. Costs presuming no settlement—Estimates for quantifying costs associated with all pending or potential litigation in question, including claims against the United States and claims against other non-Federal parties together with an assessment of the risk to all parties from any aspect of the claim and all pending litigation without a settlement. A best/worst/most likely probability analysis of the litigation outcome should be developed.

b. An analysis of the value of the water claim for the Indians.

c. Costs Presuming Settlement—quantification of alternative settlement costs to all parties. This includes an analysis showing how contributions, other than those strictly associated with litigation, could lead to settlement (e.g., facilities to use water, alternative uses of water, and alternative financial considerations).

2. All analysis in the assessment should be presented in present value terms using the planning rate used for evaluating Federal water resource projects.

Phase III—Briefings and Negotiating Position

1. The Working Group on Indian Water Settlements will present to the Secretary a recommended negotiating position. It should contain:

a. The recommended negotiating position and contribution by the Federal Government.

b. A strategy for funding the Federal contribution to the settlement.

c. Any legal or financial views of Justice or OMB.

d. Tentative position on major issues expected to arise.

2. Following the Secretary's approval of the Government's negotiating position, Justice and OMB will be notified before negotiations commence.

Phase IV—Negotiations Towards Settlement

1. OMB and Justice will be updated periodically on the status of negotiations.

2. If the propsoed cost to the U.S. of settlement increases beyond the amount decided in Phase III, if the negotiations are going to exceed the estimated time (or break down), or if Interior proposes to make signficiant changes in the Government negotiating position or in the U.S. contribution to the settlement, the original recommendation and negotiating position will be revised using the procedures identified above.

3. Briefings may be given to the Congressional delegations and the Committees consistent with the Government's negotiating position.

[FR Doc. 90-5532 Filed 3-9-90; 8:45 am]

BILLING CODE 4310-RP-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31600]

Paducah & Louisville Railway, Inc.—Trackage Rights Exemption—Pyro Equipment Co.; Exemption

Pyro Equipment Company has agreed to grant overhead and local trackage rights to Paducah & Louisville Railway, Inc., between milepost 62.26 near Blackford, KY and milepost 97.25 near Princeton, KY, a distance of 34.99 miles. The trackage rights will be effective on or about March 1, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Jill M. Hawken, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005-4797 and Catherine Behrins, Pyro Equipment Company, P.O. Box 367, Sturgis, KY 42459.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1098).

Dated: February 28, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5319 Filed 3-9-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 56)]

Union Pacific Railroad Company—Abandonment in Fremont and Teton Counties, ID; Findings

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its approximately 30.80-mile line of railroad between milepost 0.0 at Ashton and milepost 30.80 near Tetonia, ID.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than March 22, 1990. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFRF 1152.27.

Decided: February 22, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Vice Chairman Phillips commented with a separate expression. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5569 Filed 3-9-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31562]

Union Pacific Railroad Co. and Missouri Pacific Railroad Co.—Trackage Rights Over Lines of Chicago and North Western Transportation Co. Between Fremont, NE/Council Bluffs, IA, and Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 3.

SUMMARY: The Commission is accepting for consideration the application filed February 7, 1990, by Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), and Chicago and North Western Transportation Company (CNW) for UPRR and MPRR, collectively referred to as UP, to acquire trackage rights over the lines of CNW between Fremont, NE/Council Bluffs, IA, and Chicago, IL. The applicants also seek a declaratory order that: (1) UP's corporate parent, Union Pacific Corporation, and its affiliates will not gain control of CNW as a result of exercise of the trackage rights and certain additional contingent rights for which they contracted, in connection with the Blackstone-CNW transaction;[1] and (2) the additional contingent rights do not require prior Commission approval or exemption before they may become effective.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than April 9, 1990. Comment from the Secretary of Transportation and the Attorney General of the United States must be filed by April 24, 1990. The Commission will issue a service list shortly therafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list. Responsive and inconsistent applications must be filed no later than May 9, 1990.

ADDRESSES: An original and 10 copies of all documents must refer to Finance Docket No. 31562 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31562, Interstate Commerce Commission, Washington, DC 20423.

One copy of all documents filed must be sent concurrently to:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW, Washington, DC 20590.

Attorney General of the United States, Washington, DC 20530.

In addition one copy of all documents must be sent to each of applicants' representatives:

James P. Daley, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

James V. Dolan, Union Pacific Railroad Company, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

Arvid E. Roach II, Covington & Burling, P.O. Box 7566, 1201 Pennsylvania Avenue, NW., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar or Beryl Gordon, (202) 275-7245.

or

Julia Farr, (202) 275-1713.

[TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The application, exhibits, and one copy of materials filed with the SEC in connection with the transactions at issue in *Blackstone, supra*, are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

[1] *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. et al.*, 5 I.C.C.2d 1015 (1989) (*Blackstone*).

Any interested person may participate in this proceeding by submitting written comments regarding the application and the issues presented in applicants' request for declaratory order. Comments including initial lists of protective conditions and notices of intent to file responsive or inconsistent applications must be filed no later than April 9, 1990. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Written comments shall be concurrently served by first class mail on the United States Secretary of Transportation and the Attorney General of United States. We plan to issue the service list as shortly thereafter as possible. Written comments must also be served upon all parties of record within 10 days after the service list is issued by the Commission. Any person who timely files written comments shall be considered a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Comments must contain the information specified at 49 CFR 1180.4(d)(iii).

Comments filed by railroads must contain a statement on whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, or intends to seek any other affirmative relief requiring an application to be filed with the Commission. *This will be considered a prefiling notice without which the Commission will not entertain applications for this type of relief.*

Preliminary comments from the Secretary of Transportation and Attorney General must be filed by April 24, 1990.

Parties seeking to modify any of the protective conditions requested in their initial comments must file a second list of protective conditions no later than May 9, 1990. Parties will not be permitted to seek any protective conditions other than those requested in either their first or second list of protective conditions.

Parties filing responsive applications must do so no later then May 9, 1990. Responsive applications include inconsistent applications, petitions for inclusion, and any other affirmative relief that requires an application to be filed with the Commission. Any responsive applications that are not major are presumed to be significant. Responsive applications must include all supporting evidence in the form of verified statements.

All evidence in opposition to the primary application including verified statements, is due May 9, 1990. Opposition evidence shall be served on all parties of record and shall be filed (with 10 copies) with the Commission.

Primary and responsive applicants and other parties supporting applicants may file evidence in rebuttal to any opposition evidence. Rebuttal evidence of the primary application shall be due July 16, 1990, and must be served on all parties of record and filed (with 10 copies) with the Commission. Rebuttal evidence of responsive and inconsistent applicants and other parties shall be due August 13, 1990, and subject to the same requirements as primary application rebuttal.

Any impact analysis, traffic studies, and data submitted shall relate to the calendar year 1988. These data may be supplemented with more recent data where available and relevant.

Parties should contract Beryl Gordon (202) 275-7245 or Julia Farr (202) 275-1713 to obtain docket numbers for any responsive and inconsistent applications. Parties intending to file responsive applications shall file any petitions for waiver, clarification, extension of time, or petitions seeking to rebut the presumption of significant transaction, relating to the responsive applications, with their comments on the primary application. These petitions shall be filed by April 9, 1990. Each responsive application filed and accepted (if required) will be considered consolidated with the primary application in this proceeding.

Additional information is contained in the Commission's Decision No. 3. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Decided: March 2, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5570 Filed 3-9-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-77]

Florida Mycology Research Center; Revocation of Registration

On August 5, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to the Florida Mycology Research Center (Respondent) of 1668 Bush Street, Cantonment, Florida 32533. The Order to Show Cause proposed to revoke Respondent's DEA Certificates of Registration, PF0233623 and PF0238471, as a researcher, and to deny any pending applications for renewal of those registrations. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The President/Curator of the Florida Mycology Research Center, Stephen Peele, proceeding pro se, requested a hearing and the matter was docketed before Administrative Law Judge Francis L. Young. On October 27, 1988, following prehearing procedures, Judge Young issued a Memorandum to the Parties which advised that the hearing was scheduled for January 10, 1989, in Miami, Florida. The administrative law judge received an undated letter from Mr. Peele on December 2, 1988, in which he requested a continuance of the hearing. On December 2, 1988, the administrative law judge issued a second prehearing ruling and denied Mr. Peele's request. By letter dated December 19, 1988, Government counsel informed the administrative law judge that during a telephone conversation with Mr. Peele on December 16, 1988, he stated that he would be unable to attend the scheduled hearing for financial reasons. The administrative law judge issued two memoranda to the parties, one dated December 20, 1988, and one dated December 28, 1988. The memoranda asked both parties to advise the administrative law judge of their intentions with respect to the scheduled hearing date. By letter dated December 29, 1988, Mr. Peele advised that he would not appear at the hearing scheduled for January 10, 1989, and that he was relinquishing all DEA permits. On January 5, 1989, the Government filed a motion for termination of the proceedings. On January 6, 1989, the administrative law judge terminated the proceedings then pending before him. Pursuant to 21 CFR 1301.54(e), Respondent is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. This record includes Mr. Peele's prehearing statement and correspondence.

The Administrator finds that Stephen Peele is the President and Curator of the

Florida Mycology Research Center. On April 7, 1984, Mr. Peele submitted an application for registration as a researcher in Schedules I and IV. He also submitted two research protocols. One provided that he would handle Psilocybin and other toxins in the collection of wild mushrooms for biological and educational institutions; that all wild mushroom specimens were for botanical identification only and not for human consumption; and that all wild mushroom specimens would be immersed in a special preserving fluid before being shipped. His second research protocol provided that Melzer's reagent would be used to identify spores of two mushrooms, *Amanita virosa* and *Amanita phalloides*, and that chloral hydrate would be needed to create Melzer's reagent. The DEA issued two DEA Certificates of Registration to the Florida Mycology Research Center, one in Schedule I, No. PF0238471, and one in Schedule IV, No. PF0233623.

In March 1987, DEA received a letter from Mr. Peele requesting that Schedules II and III be added to his DEA registration in Schedule IV. As a result, DEA conducted a regulatory inspection of the Florida Mycology Research Center. On April 21, 1987, an on-site inspection was conducted. The inspection revealed that Respondent failed to provide adequate security for his stock of chloral hydrate, a Schedule IV controlled substance, as required by 21 CFR 1301.75. The chloral hydrate was located on an open shelf in his laboratory which consisted of one room in a small house trailer which also served as his residence.

During the on-site inspection, DEA Investigators also interviewed Stephen Peele who stated that he distributed both fresh and preserved Psilocybin mushrooms to individuals who were not registered with DEA. Mr. Peele stated that he allowed visitors to keep Psilocybin mushrooms which were found on his property during classes he conducted. Psilocybin is a Schedule I controlled substance. Mr. Peele further explained that he wanted Schedules II and III added to his DEA registration to enable him to act as a middleman between the National Cancer Institute and a chemical company. He did not intend to conduct research.

During the interview, DEA Investigators asked Mr. Peele about his educational background and training. Mr. Peele stated that he attended several colleges in Virginia between 1970 and 1978, although he did not earn a degree. He further stated that he worked as an analytical chemist for a firm in Milton, Florida for the period between 1978 and 1983, and has been self-employed since that time. The firm was contacted and advised that Mr. Peele was hired as a laboratory technician for the period between 1981 and 1983.

Mr. Peele gave the DEA Investigators copies of various issues of the Florida Mycology Research Center's (FMRC) quarterly publication, "The Mushroom Culture," which he writes and distributes for sale. The publications were reviewed by a world renowned expert in the field of mycology. The expert concluded that Respondent's publications were not the published results of scientific investigations. They contained countless exaggerations or misinterpretations of scientific facts and results. Moreover, the publications contained inaccurate, incorrect, and misleading statements. For example, the October 1984 FMRC publication contains an incomplete resume of what should be done as treatment for *Amanita phalloides* victims. By providing an incomplete resume of what should be done, the information that is provided could be misleading. In the April 1985 publication, there is a statement that "[m]ushrooms propagate themselves by producing spores. These spores are very small asexual reproductive cells." This is an incorrect statement. They are very small "sexual" cells. Respondent further states that "[b]y removing the stem from the mushroom and then placing the cap with its gills down on a piece of paper, you can capture thousands of the mushroom's spores." The spores are discharged from the sexual cell. Those spores that occur in a spore print on a mushroom are all sexual spores. This is again a misunderstanding or a lack of knowledge of the reproductive process by Mr. Peele. From the April 1984 and July 1985 FMRC publications, the expert noted references to a new psychoactive Lepiota mushroom, Peele's Lepiota. The expert knows of no psychoactive Lepiota.

The expert also noted that in the FMRC's July 1986 publication, there is a section entitled "FMRC's Aids/ Mushroom Research Program," This features a proposal that Mr. Peele submitted to the Food and Drug Administration, Division of Anti-Infective Drug Products. The proposal appeared to be an ill-founded scientific experiment, which, as constructed, would not show anything of scientific value. In any scientific experimentation, a group of controls and a group of test patients must be identified. According to Mr. Peele, a specific fungus will induce some positive effect on the immune system, in some way enhancing it. Mr. Peele does not say what the mushroom is and there is no means of objectively ascertaining the results. Moreover, he suggests no statistical method of determining whether there is improvement in the immune system. The proposal was summarily turned down. The expert explained that anyone trained in scientific method who submitted a proposal for scientific research would have automatically included those items.

In sum, the expert concluded that there was no evidence from the publications that serious research was either carried out or reported. The information published was anecdotal at best and often only partially correct or incorrect. There was no evidence from the publications to show that Mr. Peele was capable of, or actually was, carrying out serious scientific investigations. Moreover, he clearly lacks both the formal education in science and the knowledge in his claimed field of expertise.

The expert also reviewed the FMRC's catalog of mushrooms and cultures. He noted that the list of mushroom spores and cultures contain thirty that are either hallucinogenic or contain compounds that are hallucinogenic. These mushrooms could be reproduced by anyone buying the spores or the culture. He further noted that the cultures were sold for a large amount of money, an amount in excess of what one would have to pay from other culture collections. For example, the catalog lists the culture for *Psilocybe tampanensis* at a price of five hundred ten dollars while the same material could be purchased from other culture collections for forty to fifty dollars. The expert also noted that the FMRC's culture collection includes mushroom cultures which are extremely difficult, if not impossible, to produce. His catalog also listed cultures, such as *Amanita phalloides* and *Amanita virosa*, which, if grown and ingested, could be fatal to human beings. However, Mr. Peele included no warning that these cultures should not be ingested.

The investigative file also revealed that in June 1987, the Baldwin County Sheriff's Office in Alabama contacted the DEA office in Mobile, Alabama to report that Mr. Peele had gained access to private property by showing the landowner a phony badge, inscribed "DEA, Controlled Substance Distributor, State of Florida" and requesting permission to pick mushrooms on the property. The landowner reported the incident to the sheriff who questioned

Mr. Peele and two other individuals. The sheriff seized the badge.

Further, the investigative file revealed that in August 1988, Mr. Peele contacted a chemical company in an attempt to purchase 42 grams of cocaine. He explained that he needed the cocaine for use in *in vitro* research with blood/brain barrier membrane. Along with his request, Mr. Peele attached copies of the renewal applications for his registrations in Schedules I and IV. On his renewal application for Schedule IV, Respondent also checked the box for Schedule II, although he was not previously registered in that schedule. Cocaine is a Schedule II controlled substance.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator considers the following factors listed in 21 U.S.C. 823(f) and referred to in 21 U.S.C. 824(a)(4):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

The Administrator is not required to make findings with respect to all of the factors listed above. The Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances in each case. See *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987).

In this case, the second, fourth and fifth factors are relevant. After reviewing the entire investigative file, which includes Mr. Peele's Prehearing Statement and correspondence, the Administrator finds that there is little, if any, information or documentation to suggest that Mr. Peele is capable of, or even intends to, conduct serious scientific research. He has failed to provide any information that would suggest that he has the educational background, training, knowledge or facilities to carry out scientific research. Moreover, he misrepresented his previous employment information to the DEA Investigators; he failed to store chloral hydrate in a securely locked cabinet as required by 21 CFR 1301.75; and he violated Federal law and exceeded the authority granted to him by DEA by allowing nonregistrants to collect Psilocybin mushrooms on his property. Finally, Mr. Peele's use of a bogus badge, his attempt to obtain cocaine, a drug which he was not registered to handle, and his offer to sell material containing controlled substances, or from which controlled substances could be produced, at extraordinarily high prices, create great doubt as to the legitimacy of Mr. Peele's business as a commercial or scientific enterprise.

After careful review of the entire file in this case, the Administrator finds absolutely no merit in any of the explanations offered by Mr. Peele in his prehearing statement and in his correspondence. Therefore, the Administrator concludes that the further registration of the Florida Mycology Research Center, in any capacity, would be contrary to the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration PF0238471 and PF0233623, previously issued to the Florida Mycology Research Center be, and they hereby are, revoked. The Administrator further orders that any pending applications for the renewal of, or additions to, said registrations be, and they hereby are, denied.

This order is effective April 11, 1990.

Dated: March 5, 1990.

John C. Lawn,
Administrator.

[FR Doc. 90–5494 Filed 3–9–90; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Commission on UMWA Retiree Health Benefits; Establishment

In accordance with the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of an Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits is in the public interest.

The Commission will advise the Department on health care issues arising from the UMWA 1950 and 1974 Benefit Trusts (Benefit Plans) and the effects of resolving these issues on the coal industry as a whole. The duties of the Commission shall include reviewing and advising on: (1) The financial status and propsects of United Mine Workers of America 1950 and 1974 Pension Trusts (Pension Plans) and the 1950 and 1974 Benefit Trusts (Benefit Plans); (2) The provision and means of delivery of health care benefits to coal industry retirees and their dependents who either currently are or formerly were represented by the UMWA; and (3) arrangements to assure the long-term financial viability of the UMWA 1950 and 1974 Pension and Benefit Plans.

The Commission will require six months to carry out its assignment and will make its recommendations to the Secretary of Labor. The Commission will have approximately six meetings, and will terminate on October 1, 1990. The Department of Labor will provide the necessary support.

The Commission will be comprised of not more than twelve members representing the viewpoints of coal industry operators; coal industry employees, including retirees; the employee benefit and health care communities; and the public, including the employee relations community. The Commission will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

The Administrator of the General Services Administration has excused the Department of Labor from the time limits set forth in 41 CFR 101–6.1015(a)(2) and (b)(1). These regulations require that: (1) This notice be published 15 days before the Commission charter is filed with Congress, and (2) a notice announcing a meeting be published 15 days prior to the meeting date. Because of the emergency nature of this Commission, *i.e.*, to avert a serious crisis in the coal industry, the Commission is being created on an expedited basis. Moreover, the commission will have only a short period of time within which to make its recommendations due to the nature of the issues being deliberated. Consequently, the Department was excused from the foregoing requirements.

Interested persons are invited to submit comments regarding the establishment of the Advisory Commission on UMWA Retiree Health Benefits. Such comments should be addressed to Ann L. Combs, Deputy Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210; Telephone: (202) 523–8233.

Signed at Washington, DC, this 5th day of March, 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-5748 Filed 3-9-90; 8:45 am]

BILLING CODE 4510-23-M

THE MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: The Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

Date: April 10, 1990.

Time: 1:00-3:00 p.m.

Location: Rayburn House Office Building, Room 2168, Washington, DC

Topics to be Addressed: Review of Commission Activities for 1991. Reports from Subcommittees of the Commission. Financial Report.

FOR FURTHER INFORMATION CONTACT: Madeline Y. Lawson, the Martin Luther King, Jr. Federal Holiday Commission, Washington, DC 20410, (202) 755-1005.

Dated: March 7, 1990.

Madeline Y. Lawson,

Deputy Executive Director.

[FR Doc. 90-5714 Filed 3-9-90; 8:45 am]

BILLING CODE 4210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review.

AGENCY: National Endowment of the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before April 11, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Builidng, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entires are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (20) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Application Instructions and Forms for the Editions Category.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 70 per year.

Frequency of Responses: Once.

Estimated Hours for Respondents to Provide Information: 52 per respondent.

Estimated Total Annual Reporting and Recording Burden: 15,960 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90-5498 Filed 3-9-90; 8:45 am]

BILLING CODE 7536-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National council on the Arts will be held on April 3, 1990, from 9:15 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be Community Foundation Initiative Assessment update, Rural Arts Initiative update, guideline review, leadership development, Dance/Organizational Development pilot update, and Presenters/Organizational Development pilot update.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 6, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-5534 Filed 3-9-90; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 27-28, 1990 from 9:15 a.m.-6 p.m. and on March 29 from 9:15 a.m.-5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 29, 1990, from 4:30 p.m.-5:30 p.m., time permitting. The topic for discussion will be policy issues.

The remaining portions of this meeting on March 27-28, 1990, from 9:15 a.m.-6 p.m. and March 29 from 9:15 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532,

TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: March 6, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-5535 Filed 3-9-90; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on April 5, 1990, from 9:15 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 5, 1990, from 9:15 a.m. The topics for discussion will be opening remarks and general discussion.

The remaining portion of this meeting on April 5, 1990, from 10 a.m.-5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 6, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 90-5536 Filed 3-9-90; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Companies Section) to the National Council on the Arts will be held on March 26-30, 1990, from 9:30 a.m.-7 p.m. and on March 31 from 9:30 a.m.-5:30 p.m. in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 26, 1990, from 9:30 a.m.-10 a.m. and on March 31 from 1:30 p.m.-5:30 p.m. The topics will be opening remarks; and guidelines, panel process, and policy issues.

The remaining portions of this meeting on March 26, 1990, from 10 a.m.-7 p.m.; March 27-30 from 9:30 p.m.-7 p.m., and March 31 from 9:30 a.m.-1 p.m. are for the purposes of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 6, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-5537 Filed 3-9-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

Florida Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Station, Unit No. 3, located in Citrus County, Florida. This amendment was requested by the licensee's application dated October 31, 1989, as supplemented January 25, 1990.

The amendment would revise the Technical Specifications (TS) to authorize the licensee to: (1) Expand the storage capacity of Fuel Pool B so as to increase the combined storage capacity of both pools from 1153 to 1357 assemblies and decrease the number of storage locations for failed fuel containers from 8 to 0, (2) increase the allowable initial enrichment in weight percent U-235 of fuel to be stored in Fuel Pool B from 4 percent to 4.2 percent, (3) grant a one-time relief from TS 3.9.11 to allow removal of the Fuel Pool B missile shield in order to install the new high density spent fuel storage racks, and (4) expand section 5.6.1 of the TS to indicate that the high density fuel racks will use a two-region layout.

Currently, Fuel Pool B contains standard geometric reactivity racks totaling 120 cells with center-to-center spacing of 21⅛ inches. In addition, there are provisions to store eight failed fuel canisters. Each rack is mechanically fastened to studs protruding from the pool floor. The proposed modifications will increase the storage capacity in the fuel pool, and will replace existing fuel assembly racks with high density, free-standing racks without changing the basic structural geometry of the fuel pool. The new racks will be placed in a two-region layout. Region 1 will have a center-to-center spacing of 10.60 inches, and region 2 will have a center-to-center spacing of 9.17 inches.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant

hazard consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three criteria in the amendment application as restated below. The "Attached Safety Report" referred to below was a part of the licensee's application.

Missile Shield Removal

Using the standards in 10 CFR 50.92, Florida Power Corporation concludes this amendment will not involve a significant hazards consideration for the following reasons:

1. This amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. During the rerack modification spent fuel in pool B will be stored in pool A with the transfer canal gate and the missile shields in place over spent fuel pool A. This rerack modification will not increase the probability of tornado-generated missiles impacting the spent fuel pool. An evaluation has been performed to determine the consequences of tornado-generated missiles impacting the spent fuel pool gate while performing fuel rack densification work in pool B. The evaluation has determined that the missile spectrum utilized in the Crystal River FSAR analyses will not impact the spent fuel stored in this configuration.

2. This amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed rerack amendment has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated. The proposed change requires the missile shields to be removed and installed over the A pool with the transfer canal gate in place during rerack of the B pool. All fuel will be stored in the A pool during this modification. This change cannot create a new or different accident from those previously evaluated.

3. This amendment will not involve a significant reduction in a margin of safety. This is a one-time relief from Technical Specification 3.9.11 to allow removal of the missile shield for installation of high density spent fuel storage racks in pool B. The missile shields and the transfer canal gate are Class I structures and are designed for the protection of other safety-related systems for a postulated accident. Since the missile shields will be in place over pool A with the transfer canal gate separating Pool A and B, this will prevent any damage to any of the spent fuel assemblies. Therefore, the rerack modification will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation above pertaining to the removal of the missile shield and agrees that the proposed change does not involve a significant hazards consideration.

Fuel Enrichment

Using the standards in 10 CFR 50.92, Florida Power Corporation concludes this amendment will not involve a significant hazards consideration for the following reasons:

1. This amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

An increase in fuel enrichment will not by itself affect the mixture of fission product nuclides. A change in fuel cycle design which makes use of an increased enrichment may result in fuel burnup consisting of a somewhat different mixture of nuclides. The effect in this instance is insignificant because:

(a) The isotopic mixture of the irradiated assembly is relatively insensitive to the assembly's initial enrichment.

(b) Most accident doses are such a small fraction of 10 CFR [part] 100 limits, a large margin exists before any change becomes significant.

(c) The change in Pu content which would result from an increase in burnup would produce more of some fission product nuclides and less of other nuclides. Small increases in some doses are offset by reductions in other doses. The radiological consequences of accidents are not significantly changed.

2. This amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

As indicated in the enclosed analyses, an unplanned criticality event will not occur as k_{eff} will not exceed 0.95 with the maximum allowable enriched fuel in pool B, and flooded with unborated water.

3. This amendment will not involve a significant reduction in a margin of safety.

While the increased enrichment in pool B may lessen the margin to criticality, this reduction is not significant because the overall safety margin is within NRC criteria of k_{eff} less than or equal to 0.95 (NRC Standard Review Plan, Section 9.1.2).

The staff has reviewed the licensee's evaluation above regarding the change to fuel enrichment and agrees that the proposed change does not involve a significant hazard consideration.

Spent Fuel Pool Rerack

The following evaluation demonstrates (by reference to the analysis contained in the attached Safety Analysis Report) that the proposed amendment does not exceed any of the three significant hazards consideration standards. The analysis of this proposed reracking has been accomplished using current accepted codes and standards as specified in section 3.4 of the attached Safety Analysis Report. The results of the analysis meet the specified acceptance criteria in these standards as presented in the Safety Analysis Report.

(1) Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

In the course of the analysis, FPC has identified the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.
4. A spent fuel cask drop.
5. A construction accident.

The probability of any of the first four accidents is not affected by the racks themselves; thus reracking cannot increase the probability of these accidents. As for the construction accident, FPC does not intend to carry any rack directly over the stored spent fuel assemblies. All work in the spent fuel pool area will be controlled and performed in strict accordance with specific written procedures. The spent fuel cask crane which will be used to access the spent fuel pool area has been addressed in FPC's response to the NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants". This response demonstrated Crystal River compliance with Phase I of the NUREG–0612 criteria. By letter dated July 13, 1984, the NRC concluded that the control of heavy loads program (Phase I) at the Crystal River Plant was in compliance with the requirements of NUREG–0612. This program provides for the safe handling of heavy loads in the vicinity of the Spent Fuel Pool.

Accordingly, the proposed rerack will not involve a significant increase in the probability of an accident previously evaluated.

The consequences of (1) [a] spent fuel assembly drop in the spent fuel pool are discussed in the attached Safety Analysis Report. For this accident condition, the criticality acceptance criterion is not violated. The radiological consequences of a fuel assembly drop are not changed from that described in chapter 14 of the Crystal River Updated FSAR. Thus, the consequences of this type accident will not be significantly increased from previously evaluated spent fuel assembly drops, and have been found acceptable by the NRC.

The consequences of (2) [loss] of spent fuel pool cooling system flow, have been evaluated and are described in section 2.2.4 of the Safety Analysis Report. As indicated in section[s] 2.2.4 and 4.4 there is sufficient time to provide an alternate means for cooling in the event of a failure in the cooling system. Thus, the consequences of this type accident will not be significantly increase[d] from previously evaluated loss of cooling system flow accidents. Additionally, the NRC has previously accepted in the SER for the last rerack (dated 11/17/80), that the cooling capacity for the CR-3 [spent] fuel pools will be sufficient to handle the incremental heat load that will be added by the rerack modification.

The consequences of (3) [a] seismic event, have been evaluated and are described in section 3.5 of the attached Safety Analysis Report. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards listed in section 3.4 of the Safety Analysis Report. Each new rack module is provided with leveling pads which contact the spent pool floor or pool floor plates and are remotely adjustable from above, through the cells, at installation. The modules are neither anchored to the floor nor braced to the pool walls. The new racks are designed so that the floor loading from the racks filled with spent fuel assemblies does not exceed the structural capacity of the Spent Fuel Building. The Spent Fuel Building and pool structure have been designed in accordance with the criteria outlined in section 5.2 of the Crystal River Updated FSAR and previously accepted by the NRC. Thus, the consequences of a seismic event will not increase from previously evaluated events.

The consequences of (4) [a] spent fuel cask drop have been discussed in section 5.3 of the Safety Analysis Report. Based on the improvements in heavy loads handling obtained from implementation of NUREG-0612 (Phase I), further action is not required to reduce the risks associated with the handling of heavy loads. The NRC concluded that the guidelines of Phase I are adequately providing the intended level of protection against load drop accidents. Thus, the consequences of a cask drop accident will not be significantly increased from previously evaluated accident analysis.

The consequences of (5) [a] construction accident are enveloped by the spent fuel cask drop analysis described in section 5.3 of the Safety Analysis Report. Missile shields that are normally in place over the spent fuel pool will remain in place over pool A, while pool B is being reracked. In addition, all movements of heavy loads handled during the rerack operation will comply with the NRC guidelines and ANSI 14.6. Thus, the consequences of a construction accident will not be significantly increased from previously evaluated accident analysis.

Thus, it is concluded that the proposed amendment to rerack the spent fuel pool will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

FPC has evaluated the proposed reracking in accordance with the guidance of the NRC position paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate Industry Codes and Standards as listed in section 3.4 of the attached Safety Analysis Report. In addition, FPC has reviewed several previous NRC Safety Evaluation Reports for rerack applications similar to our proposal. As a result of this evaluation and these reviews, FPC finds that the proposed reracking does not, in any way, create the possibility of a new or different kind of accident from any accident previously evaluated for the Crystal River Spent Fuel Storage Facility.

(3) Involve a Significant Reduction in a Margin of Safety

The NRC [s]taff Safety Evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, will need to address the following areas:

1. Nuclear critical considerations
2. Thermal-Hydraulic considerations
3. Mechanical, material and structural considerations

The established acceptance criteria for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality anaylysis methods for the new rack design as discussed in section 2.2 of the attached Safety Analysis Report.

The methods to be used in the criticality analysis conform with the applicable portions of the codes, standards, and specifications listed in section 3.4 of the Safety Anaylsis Report. In meeting the acceptance criteria for criticality in the spent fuel pool, such that k_{eff} is always less than [or equal to] 0.95, including uncertainties at a 95/95 probability confidence level, the proposed amendment to rerack the spent fuel pools will not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative methods are used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The thermal-hydraulic evaluation uses the methods described in section 2.2 of the Safety Analysis Report in demonstrating the temperature margins of safety are maintained. The proposed reracking will allow an increase to the heat loads in the spent fuel pool. The evaluation in section 2.2 of the Safety Anaylsis Report shows that the existing spent fuel cooling system will maintain the pool temperature margins of safety for the calculated increase in pool heat load. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or spent fuel cooling concern.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal and abnormal loadings, such as an earthquake, impact due to a spent fuel cask drop, drop of a spent fuel assembly, or drop of any other heavy object. The mechanical, material, and structural considerations of the proposed rerack are described in section 3.0 of the attached Safety Analysis Report. As described in section 3.0 of the Safety Analysis Report, the proposed racks are to be designed in accordance with applicable portions of the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Application", dated April 14, 1978, as modified January 18, 1979; Standard Reivew Plan 3.8.4; and the Crystal River Updated FSAR. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural

considerations of the new racks address margins of safety against tilting and deflection or movement, such that the racks do not impact each other or the pool walls, damage spent fuel assemblies, or cause criticality concerns. Thus, the margins of safety are not significantly reduced by the proposed rerack.

In summation, it has been shown that the proposed spent fuel storage facility modifications do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evalauted; or

3. Involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's evaluation above concerning the spent fuel pool rerack and agrees that the proposed change does not involve a significant hazard consideration. Furthermore, the staff believes that the change to section 5.6.1 of the TS is administrative in nature and involves no significant hazards consideration.

In addition to the three criteria mentioned above, the Commission has provided guidance as to when an expansion of the capacity of a spent fuel pool is not likely to involve a significant hazards consideration (51 FR 7751). A spent fuel pool rerack is considered not likely to involve significant hazards consideration when: (1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits, (2) the storage expansion method does not involve rod consolidation or double tiering, (3) the k_{eff} of the pool is maintained less than or equal of 0.95, and (4) no new technology or unproven technology is used in either the construction process or the analytical techniques necessary to justify the expansion. The licensee responded to the above four criteria, in a supplement to the amendment request dated January 25, 1990, as restated below.

1. The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits.

The spent fuel pool storage expansion method consists of replacing existing racks with a design which allows closer spacing between the stored spent fuel assemblies. Fuel storage will be divided into two regions within spent fuel pool "B". Region 1 will have a 10.60 inch center-to-center spacing and Region 2 will have a 9.17 inch center-to-center spacing.

2. The storage expansion method does not involve rod consolidation or double tiering.

The spent fuel pool storage expansion method will not involve rod consolidation or double tiering. Although the racks are designed to store consolidated arrays of fuel at a maximum ratio of 2:1 FPC does not currently plan to use this fuel storage method. (See section 2.2.3.4 of attachment 2 to reference 1).

3. The K_{eff} of the pool is maintained less than or equal to 0.95.

The design of the racks is such that K_{eff} remains less than or equal to 0.95 under all conditions, including fuel handling accidents. (See section 2.2 of Attachment 2 to reference 1).

4. No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the spent fuel pool expansion.

Westinghouse (manufacturer of CR-3 Spent Fuel Pool racks) has been involved in the construction of spent fuel storage racks since the mid-1970's. The fabrication facility's capabilities include the forming, fabricating and machining of rack components as well as the welding and assembly of the completed rack. All technology utilized in the construction process of the CR-3 racks has been used on numerous previously licensed Westinghouse built fuel racks. Some of the most recent racks licensed that were manufactured in the same manner include Shearon Harris, McGuire 1 & 2, Turkey Point 3 & 4, Peach Bottom 2 & 3, and Seabrook.

The [d]esign and analyses of the racks are basically the same as has been used on nearly twenty previous applications. For the thermal-hydraulic analysis, the rack computer program developed by Westinghouse and accepted for use by the NRC, is used to determine coolant and fuel surface temperature under various rack loading and pool cooling conditions. Dynamic analysis of the racks is performed on the Westinghouse Electric Computer Analysis (WECAN) Code, which has been developed over many years by Westinghouse. It is a general purpose code with a great variety of static and dynamic finite element capabilities. The WECAN Code has been used on all previous spent fuel rack applications.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By April 11, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Crystal River Public Library, 668 NW First First Avenue, Crystal River, Florida 32629. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the requirement must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions). The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

Subject to the above requirements and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the proceeding and have the opportunity to participate fully in the comduct of any hearing which is held, including the opportunity to present evidence and cross-examine witnesses at such hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that it final determination is that the amndment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert Berkow: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to A.H. Stephens, General

Counsel, Florida Power Corporation, MAC—25D, P.O. Box 14042, St. Petersburg, Florida 33733.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 31, 1989, as supplemented January 25, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, Washington DC 20555 and at the Crystal River Public Library, 668 NW First Avenue, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 5th day of March 1990.

For the Nuclear Regulatory Commission.

Harley Silver,

Sr. Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-5583 Filed 3-9-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on February 9, 1990 (55 FR 4743). Individual authorities established or revoked under Schedule A, B, or C between January 1, 1990, and January 31, 1990, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions were established:

Federal Communications Commission. Fifteen positions of Telecommunications Policy Analyst, GS-301-13/14/15. Initial appointment to these positions will be for a period of NTE 2 years with provisions for two 1-year extensions. Effective January 19, 1990.

Fifteen positions of Telecommunications Policy Analyst, GS-301-13/14/15. Initial appointment to these positions will be for a period of NTE 2 years with provisions for two 1-year extentions. Effective January 19, 1990.

Schedule B

No Schedule B's were established during the month of January.

Schedule C

Arms Control Disarmanent Agency

One Secretary (Steno) to the Special Advisor to the President and Secretary of State on Arms Control Matters. Effective January 23, 1990.

Action

One Special Assistant to the Director. Effective January 26, 1990.

Air Force

One Special and Confidential Assistant to the Secretary. Effective January 3, 1990.

One Secretary (Stenography) to the Assistant Secretary (Space). Effective January 5, 1990.

One Confidential Assistant to the Under Secretary. Effective January 23, 1990.

Agriculture

One Director of Legislative Affairs and Public Information to the Deputy Administrator, Policy and Program Support, Rural Electrification Administration. Effective January 8, 1990.

One Confidential Assistant to the Director, Programs and Planning, Office of Public Affairs. Effective January 12, 1990.

One Executive Assistant to the Administrator, Agricultural Marketing Service. Effective January 12, 1990.

One Confidential Assistant to the Administrator, Federal Grain Inspection Service. Effective January 12, 1990.

One Confidential Assistant to the Administrator, Office of International Cooperation and Development. Effective January 12, 1990.

One Staff Assistant to the Administrator, Food and Nutrition Service. Effective January 16, 1990.

One Confidential Assistant to the Director, Office of Advocacy and Enterprise. Effective January 16, 1990.

One Confidential Assistant to the Director, Press and Media Relations, Office of Public Affairs. Effective January 19, 1990.

One Confidential Assistant to the Assistant Secretary for Administration. Effective January 12, 1990.

One Private Secretary to the Assistant Secreary for Economics. Effective January 23, 1990.

One Staff Assistant to the Director, Publishing and Visual Communications. Effective January 24, 1990.

Army

Two Staff Assistants to the Secretary. Effective January 5, 1990.

One Staff Assistant to the Assistant Secretary (Financial Management). Effective January 10, 1990.

Commerce

One Confidential Assistant to the Under Secretary for International Trade. Effective January 8, 1990.

One Congresional Affairs Officer to the Director, Bureau of the Census. Effective January 17, 1990.

One Senior Advisor on Trade Policy to the Under Secretary for International Trade. Effective January 17, 1990.

One Confidential Assistant to the Manager, Export Promotion Services. Effective January 19, 1990.

One Confidential Assistant to the Deputy Assistant Secretary for Grant Programs. Effective January 19, 1990.

One Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration. Effective January 22, 1990.

One Special Assistant to the Secretary. Effective January 22, 1990.

One Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration. Effective January 24, 1990.

One Special Assistant to the Under Secretary for Oceans and Atmosphere. Effective January 24, 1990.

One Confidential Assistant to the Chief of Staff. Effective January 26, 1990.

One Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective January 30, 1990.

Department of Energy

One Staff Assistant to the Director, Office of Energy Research. Effective January 10, 1990.

One Staff Assistant to the Assistant Secretary, Management and Administration. Effective January 16, 1990.

One Staff Assistant to the Special Assistant to the Deputy Secretary. Effective January 16, 1990.

One Special Assistant (Speechwriting) to the Secretary. Effective January 16, 1990.

One Staff Assistant to the Director, Office of Public Affairs. Effective January 16, 1990.

One Special Assistant to the Director, Public Affairs Division, Federal Energy Regulatory Commission. Effective January 16, 1990.

One Special Assistant to the Director, Public Affairs Division, Federal Energy Regulatory Commission. Effective January 19, 1990.

Equal Employment Opportunity Commission

One Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective January 26, 1990.

Department of Defense

One Special Assistant to the Principal Deputy Under Secretary (Strategy and Resources). Effective January 17, 1990.

One Staff Assistant to the Chairman, Joint Chiefs of Staff. Effective January 17, 1990.

One Director for Programs to the Assistant Secretary for Public Affairs. Effective January 17, 1990.

One Director of Editorial Services to the Assistant Secretary for Public Affairs. Effective January 17, 1990.

One Staff Assistant to the Associate Director, Office of Presidential Personnel. Effective January 17, 1990.

One Private Secretary to the Principal Deputy Assistant Secretary (International Security Affairs). Effective January 17, 1990.

One Assistant to the Deputy Director, Operation Test and Evaluation (Policy, External Affairs, and Special Programs). Effective January 17, 1990.

One Confidential Assistant to the General Counsel. Effective January 26, 1990.

Department of Education

One Special Assistant to the Assistant Secretary for Postsecondary Education. Effective January 5, 1990.

Two Confidential Assistants to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective January 5, 1990.

One Confidential Assistant to the Director, Fund for the Improvement and Reform of Schools and Teaching. Effective January 10, 1990.

One Director, Fund for the Improvement and Reform of Schools and Teaching. Effective January 12, 1990.

One Confidential Assistant to the Director, Recognition Division. Effective January 16, 1990.

One Confidential Assistant to the Executive Assistant to the Under Secretary. Effective January 24, 1990.

One Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective January 24, 1990.

One Special Assistant to the Secretary's Regional Representative, Region III. Effective January 24, 1990.

One Staff Assistant to the Director, Regional Liaison Staff. Effective January 24, 1990.

One Executive Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective January 24, 1990.

One Secretary's Regional Representative, Region V, to the Director, Regional Liaison Staff. Effective January 24, 1990.

Environmental Protection Agency

One Deputy Associate Administrator to the Associate Administrator for Regional Operations and State/Local Relations. Effective January 11, 1990.

One Director, Regional Operations Division, to the Associate Administrator for Regional Operations and State/Local Relations. Effective January 11, 1990.

Export-Import Bank of the United States

One Secretary (Typing) to the Vice President, Congressional and External Affairs. Effective January 19, 1990.

Farm Credit Administration

One Executive Assistant to the Chairman. Effective January 23, 1990.

One Special Assistant to the Chairman. Effective January 23, 1990.

Federal Communications Commission

One Special Assistant to the Chief, Office of Public Affairs. Effective January 23, 1990.

Federal Deposit Insurance Corporation

One Legislative Advisor to the Director, Office of Legislative Affairs. Effective January 29, 1990.

Federal Trade Commission

One Director, Office of Congressional Relations to the Chairman. Effective January 26, 1990.

General Services Administration

One Special Assistant to the Associate Administrator for Public Affairs. Effective January 26, 1990.

One Director of Client Relations to the Associate Administrator for Operations and Industry Relations. Effective January 8, 1990.

Health and Human Services

One Special Assistant to the Associate Commissioner, Office of Public Affairs, Social Security Administration. Effective January 8, 1990.

One Special Assistant to the Associate Commissioner for Public Affairs, Food and Drug Administration. Effective January 8, 1990.

One Confidential Assistant to the Associate Commissioner for Public Affairs. Effective January 26, 1990.

One Confidential Assistant to the Director, Office of State and Project Assistance. Effective January 26, 1990.

One Special Assistant to the Executive Secretary. Effective January 26, 1990.

One Speechwriter to the Assistant Secretary for Public Affairs. Effective January 26, 1990.

One Speechwriter to the Secretary. Effective January 26, 1990.

Department of Housing and Urban Development

One Special Assistant to the Executive Vice President, Government National Mortgage Association. Effective January 4, 1990.

One Assistant Director, Office of Executive Secretariat, to the Special Assistant to the Secretary and Director, Executive Secretariat. Effective January 8, 1990.

One Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective January 9, 1990.

One Assistant to the Deputy Assistant Secretary for Congressional Relations. Effective January 22, 1990.

One Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective January 26, 1990.

Interstate Commerce Commission

One Staff Advisor (Management) to the Commissioner. Effective January 10, 1990.

Department of the Interior

One Confidential Assistant to the Assistant to the Secretary and Director, External Affairs. Effective January 5, 1990.

One Confidential Assistant to the Deputy Solicitor. Effective January 10, 1990.

One Confidential Assistant to the Assistant Secretary for Fish and Wildlife and Parks. Effective January 17, 1990.

One Confidential Assistant to the Assistant Secretary, Territorial and International Affairs. Effective January 18, 1990.

One Congressional Affairs Officer to the Deputy Director, External Affairs, Bureau of Land Management. Effective January 24, 1990.

One Special Assistant to the Director, U.S. Fish and Wildlife Service. Effective January 24, 1990.

One Confidential Assistant to the Director, Office of Surface Mining Reclamation and Enforcement. Effective January 26, 1990.

One Special Assistant to the Assistant Secretary, Policy, Budget and Administration. Effective January 30, 1990.

One Chief, Division of Public Affairs, to the Deputy Director, External Affairs. Effective January 30, 1990.

One Congressional and Legislative Affairs Officer to the Deputy to the Assistant Secretary, Indian Affairs (Operations). Effective January 30, 1990.

U.S. International Trade Commission

One Confidential Assistant to the Commissioner. Effective January 30, 1990.

Department of Labor

One Staff Assistant to the Assistant Secretary for Mine Safety and Health. Effective January 17, 1990.

One Secretary's Representative, Boston, Massachusetts, to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 23, 1990.

One Special Assistant to the Assistant Secretary for Policy. Effective January 23, 1990.

One Confidential Assistant to the Assistant Secretary for Pension and Welfare Benefits. Effective January 23, 1990.

One Staff Assistant to the Secretary. Effective January 24, 1990.

One Secretary's Representative, Philadelphia, Pennsylvania, to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 26, 1990.

One Confidential Assistant to the Secretary's Representative. Effective January 31, 1990.

National Labor Relations Board

Two Confidential Assistants to Board Members. Effective January 31, 1990.

Office of National Drug Control Policy

One Executive Assistant to the Director. Effective January 30, 1990.

One Special Assistant for Intergovernmental and Community Relations to the Associate Director for State and Local Affairs. Effective January 30, 1990.

Office of Management and Budget

One Special Assistant to the Associate Director for Legislative Affairs. Effective January 24, 1990.

Office of Personnel Management

One Special Assistant to the Deputy Director. Effective January 11, 1990.

Small Business Administration

One Special Assistant to the Associate Administrator for Business Development. Effective January 26, 1990.

Department of State

One Foreign Affairs Officer to the Assistant Secretary. Effective January 5, 1990.

One Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs. Effective January 19, 1990.

Department of Transportation

One Staff Assistant to the Secretary. Effective January 26, 1990.

One Special Assistant for Minority Affairs to the Director, Office of Small and Disadvantaged Business Utilization. Effective January 30, 1990.

U.S. Information Agency

One Executive Assistant to the Director. Effective January 8, 1990.

One Staff Assistant to the Director, Office of Public Liaison. Effective January 26, 1990.

Authority: 5 U.S.C. 3301, 3303; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–5575 Filed 3–9–90; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27758; File No. SR-NSCC-90-2]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corporation Regarding an Amendment to NSCC's By-Laws To Increase the Number of Directors on the Board of Directors

March 2, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"), 15 USC 78s(b)(1), notice is hereby given that on February 15, 1990 the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below. Items II and III below have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Art. II section 2.1. of NSCC's by-laws, in order to increase the number of directors on the Board of Directors to eighteen.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) When NSCC was originally formed, the number of directors on the Board was sixteen. In order to provide a greater representation by participants in the management of NSCC, this number was increased to seventeen in 1984. NSCC's participant base has expanded significantly since 1984. Therefore, NSCC believes that it is in the participants' interest that the number of directors again be increased. NSCC's by-laws permit the number of directors to be increased from time to time. The

rule change consists of amended by-laws in order to increase the number of directors on the Board from seventeen to eighteen. The additional participant director will further increase the opportunity for participants to be represented on the Board, and thus, allow a greater participation in the management of NSCC by participants of NSCC.

(2) The proposed rule change is consistent with the Act in that it increases the opportunity for NSCC's participants to be involved in the administration of NSCC's affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-NSCC-90-2 and should be submitted by April 2, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5523 Filed 3-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27760; File No. SR-NYSE-90-06]

Self-Regulatory Organizations; Notice of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Odd-Lot Pricing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE has filed a proposed rule change to amend Exchange Rlule 124 and the Exchange's odd-lot pricing algorithm in order to include certain superior priced quotations in other market places.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*—In December 1987, the Commission approved amendments to the Exchange's odd-lot rules.[1] One of those amendments, approved for a two-year period, provided for the pricing of post-opening standard odd-lot market orders based on the prevailing Exchange quotation in the stock at the time the order is received, without a differential.[2] Prior to the amendments, the Exchange priced such orders on the basis of the next sale in the stock after the order was received, and permitted dealer differentials.

In approving the Exchange's 1987 proposal, the Commission recognized the public benefit of the new pricing procedure: there would be more timely execution of orders based on the prevailing quotation, as opposed to waiting until the next sale, and there would be no dealer differentials. The Commission, however, expressed concern that odd-lot orders could receive executions at less than the best available price since the Exchange's pricing formula did not include quotations of other market centers. The Commission, therefore, requested that the Exchange analyze the issue of odd-lot pricing and consider the feasibility of implementing a pricing system using the best bid and offer of market centers participating in the Intermarket Trading System ("ITS").

The Exchange has conducted the requested pricing analysis. That analysis indicates that post-opening odd-lot market orders comprised only about one-third of total Exchange odd-lot volume. In addition, approximately 93 percent of the time the Exchange's quotation constituted or equaled the best quotation among ITS participants. Finally, in approximately 20 percent of the instances where the ITS quotation was better than the Exchange's quotation, the "better" quotation appeared to result from "autoquotes" of regional exchanges lagging behind a changed NYSE quotation.

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[1] *See* Securities Exchange Act Release No. 25177 (December 7, 1987), 52 FR 47472 (December 14, 1987).

[2] The Commission recently extended the approval of that rule for an additional year. *See* Securities Exchange Act Release No. 27495 (December 1, 1989), 54 FR 50676 (December 8, 1989).

Despite this analysis, the Exchange is mindful of the Commission's concern that odd-lot pricing procedures ensure the best available price for odd-lot orders in all circumstances. Thus, the NYSE now proposes the use of a "Best Pricing Quote" ("BPQ") to provide odd-lot customers with the best prices available in the national market system, while, at the same time, addressing the problems raised by incorrect or stale quotations. The BPQ will be selected from the Exchange's quotation and certain quotations in other ITS markets. To protect against the inclusion of aberrant quotations in the BPQ, the Exchange will include quotations in a stock from other markets only if:

—The stock is included in ITS in that other market;
—The quotation is for more than 100 shares, since autoquotes are limited to 100-share size, and 100-share quotes are exempt from ITS price protection rules; [3]
—The bid or offer is not more than one-quarter point away from the Exchange's bid or offer, since such a bid or offer would appear questionable;
—The quotation conforms to Exchange Rule 61 governing minimum variations (*e.g.*, the Exchange would exclude a regional exchange quotation in sixteenths for a stock with a price greater than one dollar);
—the quotation does not create a locked or crossed market;
—The market disseminating the quotation is not experiencing operational or system problems with respect to the dissemination of quotation information; and
—The quotation is "firm" pursuant to the SEC's and the market's rules.

2. *Basis*—The statutory basis for the proposed rule change is section 6(b)(5) which requires an exchange to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competiton that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* New York Stock Exchange Rule 15A(b)(3)(A).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-06 and should be submitted by April 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 5, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5526 Filed 3-9-90; 8:45 a.m.]

BILLING CODE 6010-01-M

[Rel. No. IC-17364; File No. 812-7462]

NN Investors Life Insurance Company, et al

March 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: NN Investors Life Insurance Company ("NN Investors"); NN Endeavor Variable Annuity Account ("Variable Account"); and MidAmerica Management Corporation ("MidAmerica") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the assessment of a 1.25% charge from the assets of the Variable Account for mortality and expense risks.

FILING DATE: January 23, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 30, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, NN Investors Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272-2058, or Heidi Stam, Special Counsel, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Variable Account was established in connection with the proposed issuance of flexible premium variable annuity contracts ("Contracts").

2. The Variable Account will invest in shares of the Endeavor Series Trust ("Series Fund"). The Series Fund is a newly organized, open-end, diversified management investment company with a number of series, or portfolios. The Variable Account has a number of subaccounts, each of which invests solely in a specific corresponding portfolio of the Series Fund.

3. NN Investors imposes a contingent deferred sales charge of up to 7% of the amount withdrawn on certain full surrenders or partial withdrawals of contract value to cover expenses relating to sales and other promotional expenses. The aggregate contingent deferred sales charges are guaranteed never to exceed 8.5% of premium payments.

4. NN Investors will deduct an annual contract maintenance charge of the lesser of 2% of contract value or $35 per contract year. This charge will be deducted from the contract value at the end of each contract year prior to the annuity commencement date to compensate NN Investors for the administrative services provided to contractowners. NN Investors also deducts a daily administrative expense charge from the assets of each subaccount of the Variable Account. This charge is equal to an effective annual rate of .15% of the net assets of the subaccount. NN Investors does not anticipate any profit from these charges.

5. NN Investors imposes a charge to compensate it for bearing certain mortality and expense risks under the Contracts. The charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that amount, approximately .45% is attributable to mortality risks, and approximately .80% is attributable to expense risks. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on NN Investors. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to NN Investors. NN Investors currently anticipates a profit from this charge. The mortality risk borne by NN Investors arises from its obligation to make monthly annuity payments regardless of how long all annuitants may live and from its obligation to pay a death benefit that may be higher than the contract value; and the expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by NN Investors.

6. NN Investors represents that the mortality and expense risk charge is a reasonable charge to compensate NN Investors for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that the contract value will be less than the death benefit; and for the risk that administrative expenses will be greater than amounts derived from the administrative charges.

7. NN Investors represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon NN Investors' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. NN Investors will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

8. NN Investors does not anticipate that the contingent deferred sales charges will generate sufficient funds to pay the cost of distributing the Contracts. If these charges are insufficient to cover the expenses, the deficiency will be met from NN Investors' general account funds, which may include amounts derived from the charge for mortality and expense risks.

9. NN Investors has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by NN Investors at its administrative offices and will be available to the Commission.

10. NN Investors also represents that the Variable Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authrority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5525 Filed 3-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17363; File No. 811-5332]

Equitec Siebel Series Trust

March 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("the 1940 Act").

APPLICANT: Equitec Siebel Series Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 9, 1989 and amended on February 5, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, this application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 30, 1990. Request a hearing in writing giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with the proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Equitec Siebel Series Trust, 7677 Oakport Street, Oakland, CA 94621.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Staff Attorney, (202) 272-2058 or Heidi Stam, Special Counsel, (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application: the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier [(800) 231-3292, (in Maryland (301) 253-4300)].

Applicant's Representations

1. The Applicant is a business trust which was organized under the laws of the Commonwealth of Massachusetts on September 11, 1987. The Applicant, an open-end diversified management investment company, registered under the 1940 Act on Form N-8A on September 16, 1987. Applicant also filed a registration statement under the Securities Act of 1933 on Form N-1A which registration statement became effective on December 10, 1987.

2. Shares of beneficial interest in the Applicant were sold only to Bankers National Variable Account B (the "Variable Account") of Bankers National Life Insurance Company ("Bankers") to provide an investment vehicle for certain variable annuity contracts (the "Contracts").

3. The sale of Contracts was not as successful as Bankers and the Applicant had hoped and, consequently, the assets of the Applicant did not increase significantly as a result of investment through the Contracts.

4. The Applicant determined that continued efforts to effect new sales of the Contracts were not in the best interests of the contractholders, the Variable Account or the Applicant.

5. By letter dated January 18, 1989, the outstanding annuity contractholders of the Variable Account, the sole shareholder of the Applicant, were offered the option of either surrendering their contracts in exchange for the fully appreciated net asset value with no surrender or redemption fee charged or rolling such net asset value over into another Bankers' annuity.

6. As of April 3, 1989, all of such outstanding annuity contractholders had exercised the rollover option.

7. The Variable Account had exercised its right to redeem all of its shares of the Applicant. As of April 3, 1989, only one shareholder of the Applicant, Equitec Financial Group, Inc. ("Equitec") remains.

8. On July 20, 1989, the Board of Trustees of Applicant resolved by written consent pursuant to Section 9.2 of the Applicant's Declaration of Trust to terminate the Applicant and to authorize and empower the officers of the Applicant to take any and all action necessary to terminate the Applicant. All the expenses incurred in connection with the liquidation and deregistration of the Applicant under the Securities Act of 1933 and the 1940 Act have been paid by Equitec Securities Company, the distributor of the Contracts, or Seibel Capital Management, Inc., the investment adviser to the Applicant. All unamortized organizational expenses remaining at the time of liquidation were borne by Equitec.

9. The only asset remaining as of October 30, 1989 was $101,902 in cash representing Applicant's initial capital deposited by Equitec. Such asset has not and will not be invested in any security.

10. Applicant is not now engaged and does not propose to engage in any business other than that necessary for the winding up of its affairs. Applicant has not transferred any of its assets to a separate trust since its inception on December 10, 1987. Applicant is not a party to any litigation or administrative proceedings.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5524 Filed 3-9-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2409]

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on February 17, 1990, and amendments dated February 22, 23, and 25, 1990, I find that the Counties of Bibb, Calhoun, Chilton, Clay, Bleburne, Coosa, Dallas, Etowah, Greene, Hale, Jefferson, Marengo, Morgan, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tuscaloosa, and Walker are a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning February 3. Applications for loans for physical damage may be filed until the close of business on April 18, 1990, and for economic injury until the close of business on November 20, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308.

or other locally announced locations. In addition, applications for economic injury from small business located in the contiguous counties of Autauga, Barbour, Blount, Bullock, Chambers, Cherokee, Chocktaw, Clarke, Cullman, DeKalb, Elmore, Fayette, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marion, Marshall, Perry, Pickens, Tallapoosa, Wilcox, and Winston in Alabama; the Counties of Carroll, Chattahoochee, Haralson, Heard, Muscogee, Polk, Stewart and Troup in the State of Georgia; and the Counties of Kemper, Lauderdale, and Noxubee in the State of Mississippi may be filed until the specified date at the above location.

The interest rates are:

For Physical Damage	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.250
For Economic Injury	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Alabama is 240906, and for economic injury the number is 701900. The economic injury number for the State of Georgia is 702300, and for the State of Mississippi, the number is 702600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 27, 1990.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-5548 Filed 3-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2412]

Mississippi; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on February 28, 1990, I find that the Counties of Alcorn, Amite, Clarke, Coahoma, Covington, Forrest, Jones, Lauderdale, Newton, Panola, Quitman, Simpson, Smith, Tallahatchie, and Wilkinson are a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning January 24. Applications for loans for physical damage may be filed until the close of business on April 30, 1990, and for economic injury until the close of business on November 28, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308.

or other locally announced locations. In addition, applications for economic injury from small business located in the contiguous counties of Adams, Bolivar, Copiah, Franklin, Grenada, Hinds, Jasper, Jefferson-Davis, Lafayette,

Lamar, Lawrence, Leake, LeFlore, Lincoln, Neshoba, Pearl River, Perry, Pike, Prentiss, Rankin, Scott, Stone, Sunflower, Tate, Tippah, Tishomingo, Tunica, Wayne, and Yalobusha in the State of Mississippi; Desha and Phillips Counties in the State of Arkansas; Concordia, East Feliciana, St. Helena, and West Feliciana Parishes in the State of Louisiana; and Hardeman, Hardin, and McNairy Counties in the State of Tennessee may be filed until the specified date at the above location. Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The interest rates are:

For Physical Damage	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.250
For Economic Injury	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Mississippi is 241211, and for economic injury the number is 702600. The number for economic injury in Arkansas is 702700, in Louisiana the number is 702800, and in Tennessee the number is 702400.

(Catolog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 5, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-5549 Filed 3-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2411]

Tennessee; Declaration of Disaster Loan Area

As a result of the Presidents major disaster declaration on February 27, 1990, I find that Hamilton and Polk Counties are a disaster area as a result of damages caused by severe storms and flooding beginning February 15. Applications for loans for physical damage may be filed until the close of business on April 28, 1990, and for economic injury until the close of business on November 27, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308.

or other locally announced locations. In addition, applications for economic injury from small business located in the contiguous counties of Bledsoe, Marion, McMinn, Meigs, Monroe, Rhea, and Sequatchie may be filed until the specified date at the above location. Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The interest rates are:

For Physical Damage	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.250
For Economic Injury	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Tennessee is 241111, and for economic injury the number is 702400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 5, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-5550 Filed 3-9-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0209]

Raffensperger Hughes Venture Corp; License Surrender

Notice is hereby given that Raffensperger Hughes Venture Corp, 20 N. Meridian Street, Indianapolis, Indiana 46204, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Raffensperger Hughes Venture Corp was licensed by the Small Business Administration on May 5, 1988.

Under the authority vested by the Act and pursuant to the relations promulgated thereunder, the surrender of the license was accepted on February 16, 1990 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 2, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-5554 Filed 3-9-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0353]

Argentum Capital Partners, L.P.; Issuance of a Small Business Investment Company License

On October 17, 1989, a notice was published in the **Federal Register** (54 FR 42613) stating that an application has been filed by Argentum Capital Partners, L.P., 405 Lexington Avenue, New York, New York 10174, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license to operate as a small business investment company.

Interested parties were given until close of business November 16, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0353 on January 31, 1990, to Argentum Capital Partners, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Progam No. 59.011, Small Business Investment Companies)

Dated: March 2, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-5551 Filed 3-9-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0349]

Richmond Square Capital Corporation; Issuance of a Small Business Investment Company License

On October 20, 1989, a notice was published in the **Federal Register** (54 FR 43153) stating that an application has been filed by Richmond Square Capital Corporation, Providence, Rhode Island with the Small Business Administration (SBA) pursuant to § 107.102 of the

Regulations governing small business investment companies (13 CFR 107.102 (1989)), for a license to operate as a small business investment company.

Interested parties were given until close of business November 20, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0349 on January 31, 1990, to Richmond Square Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 2, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-5552 Filed 3-9-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Tulsa International Airport, Tulsa, Oklahoma

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Tulsa Airports Improvement Trust for Tulsa International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Tulsa International Airport under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before August 27, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is February 28, 1990. The public comment period ends April 29, 1990.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193-0612, (817) 624-5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Tulsa International Airport are in compliance with applicable requirements of Part 150, effective February 28, 1990. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 27, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Tulsa Airports Improvement Trust submitted to the FAA on November 18, 1988 noise exposure maps, descriptions and other documentation which were produced during FAR Part 150 Noise Exposure and Land Use Compatibility Program. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Tulsa Airports Improvement Trust. The specific maps under consideration are Figure 25, Existing Noise Exposure Map-1987 (page 59) and Figure 31, Future Noise Exposure Map-1993 (page 92) in the submission.

The FAA has determined that these maps for Tulsa International Airport are in compliance with applicable requirements. This determination is effective on February 28, 1990. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Tulsa International Airport, also effective on February 28, 1990. Preliminary review of the submitted material indicates that it conforms to the requirement for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 27, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, ASW-600, Fort Worth, Texas 76193-0600

Tulsa Airports Improvement Trust, Tulsa International Airport, Tulsa, Oklahoma 74158

Questions may be directed to the individual named above under the heading, "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, February 28, 1990.

William Jack Sasser,

Manager, Airports Division.

[FR Doc. 90-5541 Filed 3-9-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-12]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 2, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 6, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25595.

Petitioner: Continental Express.

Sections of the FAR Affected: 14 CFR 135.159(a).

Description of Relief Sought: To extend Exemption No. 4939 that allows the operation of Embraer 120 and Beech 1900 airplanes that are not equipped with a gyroscopic rate-of-turn indicator. A third attitude indicator would be substituted for the gyroscopic rate-of-turn indicator. Exemption No. 4939 will expire on June 30, 1990.

Docket No.: 26130.

Petitioner: Evergreen Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.1(b)(6) and 135.387 and Part 135, Appendix A, paragraphs 20 and 31; and the Casa 212 (CA212) Airplane Flight Manual.

Description of Relief Sought: To allow petitioner to operate its CA212 airplanes without complying with: (1) Section 135.387 that requires landings to be made within 90 percent of the available runway length; (2) Part 135, Appendix A, paragraph 20 and the CA212 Airplane Flight Manual, which state that the maximum airport elevation for takeoff and landing operations is 8,000 feet; (3) Section 135.1(b)(6), which restricts intentional parachute jumps to within 25 statute miles of the departure airport; (4) Part 135, Appendix A, paragraph 31, which restricts carrying passengers and cargo on the same airplane unless a 9g (nine times the force of gravity) safety restraint device is installed; (5) Part 135; Appendix A, paragraph 31, which also requires compliance with § 23.787(b), which provides that there must be a means to prevent the contents of any cargo compartment, i.e., fuel bladders, from becoming a hazard.

Docket No.: 021NM.

Petitioner: Boeing Commercial Airplanes.

Sections of the FAR Affected: 14 CFR 25.807(c)(2).

Description of Relief Sought: To allow a total passenger increase on the Boeing 757 from 219 to 231 when the number 2 door is equipped with a dual lane escape slide and certain interior modifications.

Docket No.: 25403.

Petitioner: CCAir, Inc.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378

Description of Relief Sought/Disposition: To extend Exemption No. 4926 that allows petitioner to use foreign vendors that are original equipment manufacturers of components in support of petitioner's British Aerospace Jetstream Model 3101 and Short Brothers SD 3-60 aircraft.

GRANT, February 28, 1990, Exemption No. 4926A

Docket No.: 25559

Petitioner: Aerospace Industries Association.

Sections of the FAR Affected: 14 CFR 45.11(a).

Description of Relief Sought/Disposition: To extend Exemption No. 4913 that allows manufacturers of aircraft intended for operation under Parts 121 or 127 or in commuter air carrier operation (as defined in Part 135 or SFAR 38-4), which are maintained under an FAA-approved continuous airworthiness maintenance program, to not install identification plates during the production phase on the exterior of the aircraft as specified in the rule. The exemption includes aircraft manufactured for export and includes all activities until title is transfered.

GRANT, February 28, 1990, Exemption No. 4913A

Docket No.: 076CE.

Petitioner: Raisbeck Engineering.

Sections of the FAR Affected: 14 CFR 23.473(c).

Description of Relief Sought/Disposition: To allow an exemption from

requirement for a fuel jettison system if maximum landing weight is more than 95 percent maximum takeoff weight for Beech Model B90, C90, and E90 airplanes.

GRANT, February 28, 1990, Exemption No. 5146

[FR Doc. 90-5540 Filed 3-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 6, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau of Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0170.

Form Number: 4466.

Type of Review: Extension.

Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

Description: Form 4466 is used by a corporation to file for an adjustment (quick refund) of overpayment of estimated income tax for the tax year. This information is used to process the claim, so the refund can be issued.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 16,125.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—3 hours, 35 minutes

Learning about the law or the form—12 minutes

Preparing and sending the form to IRS—16 minutes

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 65,306 hours.

OMB Number: 1545-0531.

Form Number: 706NA.

Type of Review: Revision.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return—Estate of a Nonresident Not a Citizen of the United States.

Description: Under section; 6018, executors must file estate tax returns for nonresident noncitizens who had property in the U.S. Executors use Form 706NA for this purpose. IRS uses the informaton to determine correct tax and credits.

Respondents: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—1 hour, 38 minutes

Learning about the law or the form—29 minutes

Preparing and sending the form—1 hour, 34 minutes

Copying, assembling, and sending the form to IRS—35 minutes

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 1,278 hours.

OMB Number: 1545-0857.

Form Number: 6878.

Type of Review: Extension.

Title: Federal Tax Return Information for Use in Child Support Enforcement on Delinquent Payments for State or Local Child Support Enforcement Agencies; Request for Federal Tax Return Information for Use in Child Support Enforcement.

Description: Internal Revenue Code 6103(l)(6) allows child support enforcement agencies (CSEAs) to request from IRS certain tax return information which is then used to assist in collection of delinquent child support payments. IRS needs the information from this form to identify the taxpayer on whom the CSEA requests the tax return information. Furthermore, the CSEA must establish that the information is not reasonably available from any other source.

Respondents: State or local governments.

Estimated Number of Respondents: 56.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: As necessary.

Estimated Total Reporting Burden: 8,400 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-5571 Filed 3-9-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 6, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau of Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the public debt

OMB Number: 1535-0082.

Form Number: PD 5237.

Type of Review: Extension.

Title: Subscription for Purchase of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.

Description: This form will be used to collect account establishment information from State and Local Government entities wishing to purchase demand deposit U.S. Treasury securities—State and local Government Series. Information on the forms will be encoded to create book-entry accounts on the records of the Bureau of the Public Debt.

Respondents: State or local governments.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1535-0083.

Form Number: PD 5238.

Type of Review: Extension.

Title: Request for Redemption of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.

Description: This form will be used to collect account redemption information from State and Local Government

entities wishing to redeem demand deposit U.S. Treasury securities—State and Local Government Series. Information on the forms will be encoded to process redemptions of book-entry accounts on the records of the Bureau of the Public Debt.

Respondents: State or local governments.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response/Recordkeeping: 4 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 2,000 hours.

Clearance Officer: Rita DeNagy (202) 447-1640, Bureau of the Public Debt, Room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239-0001.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-5572 Filed 3-9-90; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 48
Monday, March 12, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

March 7, 1990

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 14, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Note.—The agenda format has been revised to include new agenda prefixes: CAH, CAE, H, E, PR, PF and PC. All parts of the consent agenda will continue to be called and voted on as a single group. Consent items which are called separately at the request of a member of the Commission will be called at the end of that part of the regular agenda for the applicable substantive area (for example, CAH-5 would be considered after the last regular Hydro agenda item).

Consent Agenda—Hydro; 911th Meeting—March 14, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 2716-019, Virginia Electric and Power Company
CAH-2.
Project No. 5311-004, J. Mark Nielsen
CAH-3.
Project No. 6287-005, Rainsong Company
CAH-4.
Project No. 6524-007, Hy-Tech Company
CAH-5.
Project No. 6549-003, Conway Ranch Partnership
CAH-6.
Project No. 6913-004, Weber Basin Water Conservancy District
CAH-7.
Project Nos. 5055-004 and 8010-002, Richard E. Akin
CAH-8.
Docket No. UL89-15-001, Theodore A. and Holly S. Keck
CAH-9.
Project No. 5311-002, J. Mark Nielsen

Consent Agenda—Electric

CAE-1.
Docket No. QF90-3-000, Luz Development and Finance Corporation
CAE-2.
Docket No. ER90-54-000, People's Electric Cooperative
CAE-3.
Docket No. ER90-168-000, National Electric Associates Limited Partnership
CAE-4.
Docket No. ER90-165-000, Pacific Gas and Electric Company
CAE-5.
Docket No. ER90-38-000, Entergy Services, Inc.
CAE-6.
Omitted
CAE-7.
Docket No. ER82-545-004, Texas Utilities Electric Company
Docket No. EL89-15-001, Texas Utilities Electric Company v. Central Power & Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company
CAE-8.
Docket No. ER88-72-000, (Phase I), Northern States Power Company (Wisconsin)
CAE-9.
Docket No. EL89-22-000, Wisconsin Public Service Corporation
CAE-10.
Docket No. ER84-560-025, Union Electric Company

Consent Miscellaneous

CAM-1.
RM90-2-000, Revision of Formula for Determining Filing Fees

Consent Agenda—Gas and Oil

CAG-1.
Docket Nos. RP90-81-000 and 001, El Paso Natural Gas Company
CAG-2.
Docket No. RP90-82-000, Northern Natural Gas Company
CAG-3.
Docket Nos. TQ90-3-45-000 and 001, Inter-City Minnesota Pipelines Ltd., Inc.
CAG-4.
Omitted
CAG-5.
Docket No. RP90-80-000, Carnegie Natural Gas Company
CAG-6.
Docket No. RP89-209-002, K N Energy, Inc.
CAG-7.
Docket No. GT90-18-000, Columbia Gulf Transmission
CAG-8.
Docket No. GT90-19-000, Columbia Gas Transmission Company
CAG-9.
Omited
CAG-10.
Docket No. RP85-169-046, CNG Transmission Corporation
CAG-11.
Docket No. CP88-137-003, ANR Pipeline Company
CAG-12.
Docket No. RP90-77-000, Sabine Pipe Line Company
CAG-13.
Docket Nos. RP88-259-023 and RP89-136-000, Northen Natural Gas Company
CAG-14.
Docket No. RP90-66-001, Tennessee Gas Pipeline Company
CAG-15.
Docket No. RP90-57-002, Algonquin Gas Transmission Company
CAG-16.
Docket No. RP90-65-0010, CNG Transmission Corporation
CAG-17.
Docket No. RP89-248-002, Mississippi River Transmission Corporation
CAG-18.
Docket No. CP89-2092-001, Kentucky West Virginia Gas Company
CAG-19.
Omitted
CAG-20.
Docket Nos. RP89-113-001 and 002, Tennessee Gas Pipeline Company
CAG-21.
Docket Nos. RP90-8-002, RP89-7-063 and CP90-499-000, Transcontinental Gas Pipe Line Corporation
CAG-22.
Omitted
CAG-23.
Docket No. RP90-56-002, CNG Transmission Corporation
CAG-24.
Docket Nos. TA89-1-55-003, Questar Pipeline Company
CAG-25.
Omitted
CAG-26.
Docket Nos. RP87-7-060 and CP88-328-003, Transcontinental Gas Pipe Line Corporation
CAG-27.
Docket Nos. RP88-239-000, RP89-11-000 and RP89-129-000, Trunkline Gas Company
CAG-28.
Omitted
CAG-29.
Docket No. RM87-34-059, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
CAG-30.

Docket No. TM90-3-42-003, RP90-49-000 and CP99-99-000, Transwestern Pipeline Company

CAG-31.
Docket No. RP88-131-003, Carnegie Natural Gas Company

CAG-32.
Docket No. SP90-20-000, Association of Oil Pipelines

CAG-33.
Docket No. RP89-675-000, The Inland Gas Company, Inc.

CAG-34.
Docket No. ST90-359-000, Transok, Inc.

CAG-35.
Docket No. ST90-441-000, TenOaks Pipeline Company

CAG-36.
Docket No. ST89-4663-000, Dow Pipeline Company

CAG-37.
Docket No. GP90-01-000, Illinois Department of Mines and Minerals

CAG-38.
Omitted

CAG-39.
Omitted

CAG-40.
Docket No. CP73-184-006, Colorado Interstate Gas Company, a Division of Colorado Interstate Gas Company
Docket No. CI73-485-005, CIG Exploration, Inc.

CAG-41.
Docket No. RM89-17-000, Deletion of Subpart H of Part 284

CAG-42.
Docket Nos. CP89-2047-001 and CP89-2048-001, Kern River Gas Transmission Company
Docket Nos. CP89-01-003 and CP89-2-002, Mojave Pipeline Company
Docket Nos. CP90-41-001, CP87-479-013 and CP87-480-012, Wyoming-California Pipeline Company

CAG-43.
Docket Nos. CP89-1991-001 and CP89-2001-001, Mississippi River Transmission Corporation

CAG-44.
Omitted

CAG-45.
Docket No. CP89-784-001, Panhandle Eastern Pipe Line Company

CAG-46.
Docket No. CP90-753-000, Superior Offshore Pipeline Company

CAG-47.
Docket No. CP90-770-000, Colorado Interstate Gas Company

CAG-48.
Docket No. CP90-650-000, Questar Pipeline Company

CAG-49.
Docket No. CP90-252-000, Northwest Pipeline Corporation

CAG-50.
Docket No. CP88-319-000, CNG Transmission Corporation

CAG-51.
Docket No. CP89-22100-000, ANR Pipeline Company

CAG-52.
Omitted

CAG-53.
Docket No. CP89-886-000, Transwestern Pipeline Company

CAG-54.
Docket No. CP89-1340-000, Sabine Pipe Line Company

CAG-55.
Docket No. CP89-1627-000, Williams Natural Gas Company

CAG-56.
Docket No. CP88-314-000, Natural Gas Pipeline Company of America

CAG-57.
Docket Nos. CP89-2002-000 and 001, Iowa Public Service Company

CAG-58.
Docket No. CP88-171-001, Tennessee Gas Pipeline Company

CAG-59.
Docket No. CP87-528-001, Southern Natural Gas Company

CAG-60.
Omitted

CAG-61.
Docket No. OR89-3-000, Gulf Central Pipeline Company

CAG-62.
Docket No. RP89-160-010, Trunkline Gas Company

CAG-63.
Docket No. RP89-161-011, ANR Pipeline Company

CAG-64.
Docket No. RP90-64-001, Texas Gas Transmission Corporation

CAG-65.
Docket No. CAP89-1281-004, Natural Gas Pipeline Company of America

CAG-66.
Docket Nos. RP87-62-000 and RP86-148-000, Pacific Gas Transmission Company

Hydro Agenda

H-1.
Reserved

Electric Agenda

E-1.
Docket No. ER87-97-003, Pacific Gas & Electric Company. Order on request for extension.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1. (A)
Docket No. RM87-5-003, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Rehearing of Order No. 497-A.

PR-1. (B)
Docket No. RM87-5-003, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines
Docket No. MG88-41-001, Superior Offshore Pipeline and Texas Sea Rim Pipeline
Docket No. MG89-4-003, Carnegie Natural Gas Company
Docket Nos. MG90-3-000 and MT90-7-000, Trunkline LNG Company
Docket No. MG90-2-000, Ohio River Pipeline Corporation. Rehearing.

PR-2.
Docket Nos. TA89-1-48-000, 001, and 002, ANR Pipeline Company. Take-or-pay settlement costs and technical conference.

PR-3.
Docket Nos. CP86-578-000, CP88-611-000, CP88-612-000, CP88-613-000, CP88-614-000, CP88-616-000, CP88-617-000, CP88-618-000, CP88-619-000, CP88-624-000, 001, CP89-41-000, CP89-326-000, CP89-312-000, CP89-1740-000 and CP90-203-000, Northwest Pipeline Corporation. Order concerning applications for gas inventory charge, revised sales certificates, and abandonment.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket Nos. RP90-4-001 and RP89-48-006, Transwestern Pipeline Company. Whether to authorize elimination of the minimum rate in Transwestern's interruptible sales service (IS-1) rate schedule.

PC-2.
Docket No. CP90-14-000, Transwestern Pipeline Company. Whether to amend Transwestern's interruptible sales service (ISS) certificate to unbundle its interruptible sales and transportation services.

PC-3.
Docket No. CP88-332-003, El Paso Natural Gas Company. Whether to move the title transfer point for interruptible sales service (ISS) from the city gate back to the mainline receipt points.

PC-4.
Docket No. CP89-1998-000, Texas-Ohio Gas, Inc. v. Equitrans, Inc. Whether Equitrans violated its open access transportation certificate by curtailing interruptible transportation for Texsas-Ohio while continuing to offer interruptible sales service (ISS) under its ISS certificate.

PC-5.
Docket Nos. CP69-759-003 and 004, Transcontinental Gas Pipe Line Corporation. Order on protests regarding pricing of ISS sales.

PC-6.
Docket No. CP89-2107-000, Arkla Energy Resources, Inc., a Division of Arkala, Inc.
Docket No. CP89-5-002, CNG Transmission Corporation
Docket No. CP88-332-014, El Paso Natural Gas Company
Docket No. CP88-546-004, Equitrans, Inc.
Docket No. CP89-1179-001, Kentucky-West Virginia Gas Comapny
Docket No. CP88-312-006, Natural Gas Pipeline Company of America
Docket No. CP88-2-010, Northern Natural Gas Company
Docket No. CP89-834-003, Panhandle Eastern Pipeline Company
Docket No. CP88-473-004, Southern Natural Gas Company
Docket No. CP89-759-001, Transcontinental Gas Pipe Line Corporation
Docket No. CP88-99-012, Transwestern Pipeline Company
Docket No. CP90-235-001, Williams Natural Gas Company. Inquiry to

reexamine ISS certificates to determine whether modifications are required.

PC-7. (A)

Docket No. CI85-673-006, *et al.*, LaSER Marketing Company, *et al.*

Docket No. CI87-547-004, Enron Gas Marketing, Inc.

Docket No. CI87-786-003, Val Gas, L.P.

Docket No. CI87-825-003, V.H.C. Gas Systems, L.P.

Docket No. CI89-7-002, Pacific Atlantic Marketing, Inc. Request to extend blanket sales certificates. Whether to authorize the sale or resale of ISS gas purchased from pipelines.

PC-7. (B)

Docket No. CI86-419-004, ANR Supply Company

Docket Nos. CI88-346-004 and 003, Anthem Energy Company

Docket Nos. CI86-377-004 and CI86-378-004, Arkla Energy Marketing Company

Docket No. CI89-302-001, Chevron U.S.A. Inc.

Docket No. CI89-194-001, Coastal Gas Marketing Company

Docket No. CI88-274-002, Coastal States Gas Transmission Company

Docket No. CI89-332-001, Columbia Gas Development Corporation

Docket No. CI87-547-006, Enron Gas Marketing, Inc.

Docket No. CI89-501-001, Enserch Gas Company

Docket No. CI89-361-001, Equitable Resources Marketing Company

Docket No. CI85-673-007, LaSER Marketing Company

Docket No. CI87-307-003, MidCon Marketing Corporation

Docket No. CI87-223-004, Oxy USA, Inc.

Docket No. CI89-7-003, Pacifica Atlantic Marketing, Inc.

Docket No. CI88-74-003, Panhandle Trading Company

Docket No. CI86-7-006, Seagull Marketing Services, Inc.

Docket No. CI86-503-004, Sonat Marketing Company

Docket No. CI86-168-006, Tenngasco Corporation and Tenngasco Exchange Corporation

Docket No. CI86-27-007, Transco Energy Marketing Company

Docket No. CI87-476-003, TXG Gas Marketing Company

Docket No. CI87-786-004, Val Gas L.P.

Docket No. CI87-825-005, V.H.C. Gas Systems, L.P.

Docket No. CI88-648-002, Western Gas Marketing USA Ltd.

Docket No. CI89-479-001, Western Gas Processors, Ltd. Request to extend affiliated marketers' certificates.

PC-8.

Docket Nos. CP88-171-000 and 001, Tennessee Gas Pipeline Company

Docket Nos. CP88-94-000, 001, CP88-194-000 and 001, National Fuel Gas Supply Corporation

Docket Nos. CP88-92-000 and 001, Transcontinental Gas Pipe Line Corporation

Docket Nos. CP88-195-000, 001, 002, and PennEast Gas Services, CNG Transmission Corporation and Texas Eastern Transmission Corporation

Docket Nos. CP87-131-002 and CP87-132-002, Tennessee Gas Pipeline Company. Application for authorization to construct pipeline facilities.

PC-9.

Omitted

Lois D. Cashell,

Secretary.

[FR Doc. 90-5767 Filed 3-8-90; 3:59 pm]

BILLING CODE 6717-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Tuesday, March 6, 1990, at 2:50 p.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the resolution of two thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Jonathan Fiechter, acting in the place and stead of Salvatore R. Martoche (Acting Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 7, 1990.

Resolution Trust Corporation

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-5699 Filed 3-8-90; 11:14 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 48
Monday, March 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 90-4329 appearing on page 6831 in the issue of Tuesday, February 27, 1990, make the following correction:

On page 6831, in the second column, before *Title*, add "*Agreement No.*: 212-010286-024".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 90-4330 appearing on page 6831 in the issue of Tuesday, February 27, 1990, make the following correction:

On page 6831, in the third column, before *Title*, add "*Agreement No.*: 224-200326".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89E-0473]

Determination of Regulatory Review Period for Purposes of Patent Extension; LOSEC®

Correction

In notice document 90-3065 beginning on page 4691 in the issue of Friday, February 9, 1990, make the following corrections:

1. On page 4691, in the second column, in the fourth line from the bottom of the page, "3,255,431" should read "4,255,431".
2. On the same page, in the third column, in the ninth line from the bottom "nay" should read "any".
3. On the same page, in the same column, in the eighth line from the bottom, "any" should read "may".
4. On page 4692, in the first column, in the sixth line, "89th" should read "98th".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Native American Programs; Proposed Total Allocations and Allocation Formulas for Program Year 1990; Regular Program and Calendar Year 1990 Summer Youth Employment and Training Program

Correction

In notice document 90-4098 beginning on page 6548 in the issue of Friday, February 23, 1990, make the following corrections:

1. On page 6549, in the table, in the first column, in the fifth complete entry, the first line should read "North Pacific Rim".
2. On page 6553, in the table, in the first column, in the fourth complete entry, the zip code should read "55720".
3. On page 6554, in the table, in the sixth column, the sixth entry should read "43518".
4. On the same page, in the 4th column, the 12th entry should read "24841".
5. On page 6555, in the table, in the third column, the second entry should read "556,822".
6. On the same page, in the first column, in the fifth complete entry, the grant number should read "99-7-2200-55-129-02".
7. On page 6560, in the table, in the first column, in the fifth complete entry, the zip code should read "53204-3512".

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1207

Standards of Conduct

Correction

In rule document 89-1880 beginning on page 4002 in the issue of Friday, January 27, 1989, make the following correction:

§ 1207.80 [Corrected]

On page 4004, in the first column, remove the section heading and text designated § 1207.80.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

At the end of notice document 90-5030 beginning on page 8214 in the issue of Wednesday, March 7, 1990, make the following correction:

On page 8247, in the first column, in the document file line, "Filed 3-6-90" should have read "Filed 3-7-90".

BILLING CODE 1505-01-D

federal register

Monday
March 12, 1990

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 791 and 882

Section 8 Certificate Program; Project-Based Assistance; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 791 and 882

[Docket No. R-90-1394; FR-2502-I-02]

RIN 2502-AE56

Section 8 Certificate Program; Project-Based Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises HUD regulations to permit a Public Housing Agency (PHA) to attach Section 8 Certificate Program assistance to newly constructed units. The rule implements a recent statutory amendment, which provides that the Department shall permit a PHA to attach, to newly constructed structures as well as to rehabilitated units, up to 15 percent of the Section 8 Certificate Program assistance provided by the PHA. The owner must agree to construct the units with other than assistance under the United States Housing Act of 1937. Because of the greater potential environmental impact and fair housing considerations inherent in new construction activity, as compared to the rehabilitation of existing structures, this interim rule provides for more HUD involvement in the review of newly constructed projects than the January 1989 interim rule provided for rehabilitated projects. This interim rule also provides more specificity concerning the information that a PHA must require from the owner when new construction is involved.

DATES: *Effective date:* This rule is effective on April 12, 1990, except for §§ 882.720(b)(2), 882.723(b), 882.725, and 882.733(b), which will not be effective until approval of the information collection requirements in those sections and issuance of an approval number by the Office of Management and Budget (OMB). HUD will publish a separate notice announcing the effective date of those sections and the OMB approval number. *Comment due date:* May 11, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

As a convenience to commenters, the Rules Docket clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-3938. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in §§ 882.720(b)(2), 882.723(b), 882.725, and 882.733(b) of this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The Department has requested expedited review of these information collection requirements by April 11, 1990. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements.

The other information collection requirements contained in this rule have previously been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0388.

Public reporting burden for each collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Information.*

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

This interim rule implements section 8(d)(2)(B) of the United States Housing Act of 1937 (the 1937 Act), as added by section 1005(b)(1) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (the 1988 McKinney Act). Section 8(d)(2)(B) of the 1937 Act directs HUD to permit a PHA to attach assistance to any newly constructed structure if the owner or prospective owner agrees to construct the structure other than with assistance under the 1937 Act and otherwise complies with the requirements of Section 8 of the 1937 Act, and if the aggregate assistance provided by the PHA to be attached to newly constructed or rehabilitated units does not exceed 15 percent of the Certificate Program assistance provided by the PHA.

On January 4, 1989, the Department published an interim rule (54 FR 230) (January 1989 interim rule), implementing the rehabilitation component of project-based Certificate Program assistance in accordance with section 8(d)(2)(A) of the 1937 Act. The January 1989 interim rule added a new subpart G to part 882. This interim rule revises subpart G to add provisions to permit project-basing assistance in connection with newly constructed units.

Because of the greater potential environmental impact and fair housing considerations inherent in new construction activity, as compared to the rehabilitation of existing structures, this interim rule provides for more HUD involvement in the review of newly constructed projects than the January 1989 interim rule provided for rehabilitated projects. This interim rule also provides more specificity concerning the information that a PHA must require from the owner when new construction is involved.

It should be noted that this interim rule is a complete revision to part 882, subpart G. Accordingly, it totally replaces the subpart G that was added by the January 1989 interim rule and it applies to, and comments are solicited concerning, all aspects of project-based

Certificate Program assistance, rehabilitation, as well as new construction. The Department believes that several requirements formulated as part of the development of this interim rule and not included in the January 1989 interim rule are appropriate for application to rehabilitation, as well as to newly constructed projects, and has made several changes in provisions concerning rehabilitation. The following section-by-section discussion of the rule text includes a discussion of those revisions to requirements applicable to rehabilitation. It also identifies provisions, applicable in this interim rule only to new construction, that the Department is considering extending to rehabilitation in the final rule.

The January 1989 interim rule noted that the comment due date for that rule was being left open and would be set in this interim rule (see 54 FR 231). As previously noted, this interim rule includes the rehabilitation component, as well as the new construction component, of project-based assistance. The Department is hopeful that this extended comment period may permit comment based on actual experience in administering or otherwise participating in the rehabilitation component of project-based Certificate Program assistance.

SECTION-BY-SECTION ANALYSIS

General

Section 882.701 Purpose and Applicability

Paragraph (b) of this section contains a technical revision which adds a brief description, omitted in the January 1989 interim rule, of "project based assistance." In addition, a new paragraph (e) has been added to make it clearer that this project-based assistance is funded out of a PHA's ACC funding authority for its entire Certificate Program and that HUD does not provide separate funding for project-based assistance. This paragraph has been added to minimize the likelihood that a PHA might assume that it will receive additional funding, and is not a change in policy.

Section 882.702 Additional Definitions

The definition of "15-Percent Limit" in the January 1989 interim rule based the 15-Percent Limit on "the total number of units reserved by HUD for a PHA's Section 8 Certificate Program." The reason for using units "reserved" rather than "under ACC" was to permit a PHA to avoid the need to seek HUD approval for a higher limit when units reserved but not yet under ACC were placed under ACC by the PHA. However, the provision as drafted in the January 1989 interim rule was deficient because it would have permitted a PHA to enter into Agreements to project-based assistance that could exceed 15 percent of the number of units under ACC.

This rule revises the definition of "15-Percent Limit" so that it is based on "the total number of units under ACC for a PHA's Section 8 Certificate Program." Related revisions have been made in § 882.703 (a)(1) and (b)(1). Section 882.703(a)(1) has been revised to make it clear that the PHA may not enter into Agreements for project-based units in excess of the 15-Percent Limit, but also permits the HUD Field Office to determine the maximum number of units that may be project-based on the assumption that units that have been reserved but are not yet under ACC will be under ACC before Agreements for the project-based units are executed. If a PHA does not place these reserved units under ACC, it would not be able to project-base to the maximum authorized by the HUD Field office. Under § 882.703(b)(1) as revised by this rule, the PHA identifies the "number of units currently under ACC plus the number of units reserved but not yet under ACC" rather than the "number of units currently reserved." The definition of "Funding Source" also has been slightly revised for clarity.

Section 882.703 Information To Be Submitted to HUD by the PHA Concerning Its Plan To Attach Assistance to Units

See the discussion of "15-Percent Limit" under § 882.702 for a discussion of changes in this section concerning units reserved but not yet under ACC.

Paragraph (a)(2) has been revised to make it clear that the PHA must indicate for each funding source the number of units by unit size to which assistance will be attached.

The information submitted to HUD by the PHA under this section is intended to enable HUD to ascertain that the PHA's anticipated use of project-based certificate Program assistance will remain within the 15-percent limit. Since that limit applies to project-basing as a whole, this section does not distinguish between new construction units and rehabilitation units.

Paragraphs (a)(3) and (b)(4) of § 882.705 of the January interim rule had provided that the rehabilitation period and HAP Contract term must be within the ACC term. This rule removes the reference to the "rehabilitation period" because the ACC limitation applies only to the HAP Contract termination date. A lengthy rehabilitation period would delay HAP Contract execution but could not be a basis for extending the HAP contract term beyond the ACC term for the funding source.

Section 882.707 New Construction: Housing Quality Standards and Construction Standards

The housing quality standards in § 882.109 apply to new construction units.

Section 882.708 New Construction: Site and Neighborhood Standards

This section contains the site and neighborhood standards for new construction projects. Each of HUD's assisted housing construction programs has site and neighborhood standards by which HUD assesses the physical adequacy of the proposed site, its suitability from the standpoint of facilitating and furthering compliance with applicable civil rights laws and authorities, and its accessibility to various services. The policies in paragraph (c) relating to the acceptability of sites in areas of minority concentration and in racially mixed areas are derived from the policies that applied to the Section 8 New Construction Program (see 24 CFR 880.206(c)), but provide more detail on how the standards are to be applied.

Section 882.711 Prohibition Against New Construction or Rehabilitation With U.S. Housing Act of 1937 Assistance and Use of Flexible Subsidy; Pledge of Agreement or HAP Contract

The January 1989 interim rule (§ 882.725(a)), in accordance with section 8(d)(2) of the 1937 Act, prohibited the use of any other assistance provided under the 1937 Act to rehabilitate a unit to which assistance is to be attached under this subpart G. Section 882.725(a) also prohibited attaching assistance to a unit that had been, within five years of execution of a HAP agreement, rehabilitated with other assistance provided under the 1937 Act. The rule provided one exception to this latter prohibition, namely, project-based assistance could be attached to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation under section 21 of the 1937 Act. This rule continues that policy, but the rule has been revised to make it clearer that public housing modernization funds may not be used to finance the rehabilitation needed to meet the requirements of § 882.710, Rehabilitation: minimum expenditure requirement, to qualify for project-based assistance under this subpart G.

The provisions relating to the pledge of the agreement or HAP contract (§ 882.711(b)) have been simplified. In addition, the prohibition against being a party to the financing documents (§ 882.725(b)(2) of the January 1989 interim rule) has been eliminated. This change will permit PHAs that are also State housing development agencies to carry out their financing functions in connection with project-based assisted units.

Section 882.712 Relocation

The Department has added provisions implementing the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601) (URA), as amended by the Uniform Relocation Act Amendments of 1987, title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1971 (Pub. L 100-17, approved April 2, 1987). On February 19, 1988, HUD published an interim rule that, effective April 2, 1989, removed HUD's URA regulations and made the government-wide rule in 49 CFR part 24 applicable to all HUD-assisted programs subject to the URA. Section 882.712(b) of this interim rule further implements these policies by defining who are "displaced persons" for purposes of the project-based component of the Section 8 Certificate Program and providing that these displaced persons' eligibility for relocation assistance is subject to the requirements of 49 CFR part 24 (see final rule published on March 2, 1989, at 54 FR 8912). The URA requirements apply to both new construction and rehabilitation. To conform to the usage in HUD's other regulations relating to the URA and to temporary relocation, this section now uses the term "displacement" instead of "permanent displacement." This is a nonsubstantive change; "displacement" means a permanent and involuntary move from the project as a direct result of acquisition, rehabilitation, or demolition for an activity assisted under this subpart G.

Section 882.713 Other Federal Requirements

The environmental review requirements in this interim rule contain a significant change from the January 1989 interim rule. That rule (§ 882.713(b)), permitted a PHA to project-based assistance in connection with rehabilitated units without prior HUD environmental review if the PHA documented that the rehabilitation activity would not exceed specified environmentally-related thresholds and followed specified procedures to ascertain that the rehabilitation would not trigger historic preservation requirements. This rule now requires that all environmental reviews for both new construction and rehabilitation be done by HUD (see § 882.713(b)). The Department has made this revision, in part, to respond to concerns raised by the Advisory Council on Historic Preservation that the authority granted PHAs by the January 1989 interim rule effectively constituted a delegation of HUD's responsibilities under section 106 of the National Historic Preservation Act of 1966 and the Council's regulations (36 CFR part 800). The Department is also concerned with the scope of the authority granted PHAs with respect to the environmental thresholds. The concern does not rest with the PHAs applying the categorical exclusions thresholds, because the thresholds should be readily ascertainable and easily documented. However, deciding whether there is reason to believe that, notwithstanding inclusion in these categorical exclusion thresholds, the project might have a significant environmental impact because of extraordinary circumstances can be a highly judgmental decision. The Department, on further consideration, believes it should make this decision in the first instance and not rely on the PHA to bring such circumstances to HUD's attention.

Paragraph (c)(8) contains a requirement that was not in the parallel section (§ 882.717) of the January 1989 interim rule. Paragraph (c)(8) refers to 24 CFR part 24, the Department's regulations excluding from participation in HUD programs contractors and participants that have been debarred, suspended, or placed under a limited denial of participation. This requirement applies to both new construction and rehabilitation.

Paragraphs (c)(9) and (c)(10) apply to new construction only. Paragraph (c)(9) requires compliance with 24 CFR part 791, which concerns local government review of applications for housing assistance. Part 791 implements the requirements of section 213 of the Housing and Community Development Act of 1974. (A conforming amendment has been made to 24 CFR 791.102.) Paragraph (c)(10) requires compliance with 24 CFR part 52, which concerns intergovernmental review of HUD programs and activities. Each of these regulations implement policies that are generally applicable to other construction programs administered by HUD.

Section 882.714 Initial Contract Rents

Under the January 1989 interim rule, a PHA established the initial contract rents, but had to obtain HUD approval of these rents if the project would contain fifty or more project-based assisted units. The Department has considered the matter further and has decided that it should set the initial contract rents in every case. Experience with the Section 8 Moderate Rehabilitation Program—the other section 8 project-based assistance program in which PHAs establish initial contract rents—has indicated that rents in many instances are not being properly calculated, with the result that the initial contract rents are too high. Accordingly, this interim rule revises the provisions applicable to rehabilitation to provide that HUD sets the initial contract rents. HUD also sets the initial contract rents for new construction.

Section 882.714(b)(2) contains a provision (not in § 882.719 of the January 1989 interim rule) that clarifies that any request for initial gross rents, for units within a designated geographic area, exceeding the applicable Fair Market Rent by up to 20 percent must be supported by rental housing survey data that is statistically representative of rent levels. In addition, this section provides that any such request will not be approved where there is a soft market.

This section (see § 882.714(c)(3)) contains a provision (not in § 882.719 of the January 1989 interim rule) concerning establishing initial contract rents when the new construction or rehabilitation is financed with a HUD insured or coinsured mortgage. For these projects, in addition to meeting the other rent reasonableness requirements, the initial Contract Rent for each assisted unit may not exceed an amount determined by HUD to be necessary to amortize the insured or coinsured mortgage.

This rule contains policies concerning individual group residences (IGR) that were not in the January 1989 interim rule. Paragraph (e)(2) now requires that each family residing in an IGR unit execute a separate lease. Paragraph (e)(3) provides guidance on how to allocate gross rent in an IGR unit. It differs from the policies for the regular Certificate Program (§ 882.106(d)) by not allowing persons not receiving Section 8 assistance (other than resident assistants) to reside in an IGR with assisted families. Paragraph (e)(4) is the same as § 882.106(d)(3). It requires that consideration be given to the presence or absence of common (rather than private) cooking, dining, and sanitary facilities, and to the provision of special amenities or of maintenance or management services in determining the reasonableness of the rents.

Section 882.715 Contract Rent Adjustments

This section is the same as § 882.721 of the January 1989 interim rule. PHAs continue to make contract rent adjustments.

Section 882.716 Limitation on Housing Design and Amenities

This section is new and applies to both new construction and rehabilitation. It requires that housing assisted under subpart G be modest in design. The purpose of this requirement is to contain costs. It is comparable to modest design requirements in other project-based housing assistance programs. Under this requirement, the HUD Field Office would review applications to determine that amenities are limited to those amenities that are generally provided in unassisted, decent, safe, and sanitary housing for lower income families in the market area.

Section 882.720 PHA Unit Selection Policy

Paragraph (a), which is comparable to § 882.723(a) of the January 1989 interim rule, has been revised to require HUD Field Office review and approval of the PHA's unit selection policy. Paragraph (b)(1) provides additional unit selection policy requirements applicable to both new construction and rehabilitation. Paragraph (b)(2) lists the following factors that must be included in the PHA's procedures for selecting applications for either new construction or rehabilitation: site; design; previous experience of the owner and other participants in development, marketing, and management; responsiveness to local objectives specified by the PHA; and feasibility of the project as a whole (including likelihood of financing and marketability). The list is not exclusive and PHAs may add other factors they believe appropriate to their particular circumstances, and may also set the relative weight for each of the factors.

Paragraph (b)(3) specifies information that must be submitted to the PHA with the owner's application. These requirements apply to both new construction and rehabilitation.

Paragraph (c) permits a PHA to attach assistance to units without advertising or following the above selection factors, if the attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s). In certain circumstances, it may be desirable to provide project-based Certificate Program assistance for a transitional period before tenants purchase the housing. The PHA's decision to project-base the assistance for these projects would be based in part on whether the project-basing would further the purposes of the sale to the resident management corporation. Because that consideration would not apply in the PHA's selecting of projects that do not involve resident management corporations, the Department has decided that it is appropriate to exclude these projects from the otherwise applicable advertising and unit selection factors.

Processing to HAP Agreement

Because this rule provides for greater HUD review of new construction projects than of rehabilitation projects, the provisions in the rule relating to this stage of processing have been separated for the two types of projects. In general, §§ 882.721 and 882.722 of this rule, which apply to rehabilitation, contain the same requirements for initial inspection, determination of eligibility, and work write-ups as did §§ 882.723(b) and 882.729(a) of the January 1989 interim rule. Under § 882.721(a), to conform to the unit selection policy changes discussed under § 882.720, above, the PHA must determine that the application is responsive to and in compliance with the PHA's written selection criteria and procedures. Section 882.721(b), requires a PHA to obtain HUD approval that the project complies with the limitation on housing design and amenities in § 882.716 and to submit a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy, and to conform to the environmental review changes discussed under § 882.713 above, requires a PHA to seek and obtain HUD environmental clearance before selecting a unit for assistance. Section 882.721(b) also expressly provides that HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements. Sections 882.723, 882.724, and 882.725, which apply to new construction, are discussed below.

Section 882.723 New Construction: PHA Evaluation and Technical Processing

Under this section, a PHA evaluates owners' new construction applications to determine whether they contain all of the required documentation in the proper form, are responsive to and in compliance with the PHA's written selection criteria and procedures, whether the proposed initial contract rents are within the FMR limitations, and whether the applications meet HUD program policies and regulations.

The PHA submits to the Field Office those application determined by the PHA to be eligible for further processing. The PHA's submission must not exceed the number of units for which the PHA is authorized to project-base assistance, taking into consideration the number of units for which it intends to provide project-based assistance in connection with rehabilitation. The PHA's submission must include a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy. HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the Owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

Section 882.724 New construction: Field Office Review of Applications

The Field Office reviews each new construction application submitted by a PHA to determine compliance with the requirements concerning: Site and neighborhood standards in § 882.708; limitation on housing design and amenities in § 882.716; previous participation of the principals and other participants; local government review and consistency with the Housing Assistance Plan under 24 CFR part 791; intergovernmental review procedures in 24 CFR part 52; and environmental impact under the National Environmental Policy Act of 1969 in accordance with 24 CFR part 50 and under the related laws and authorities set forth in 24 CFR 50.4.

The HUD Field Office also determines the initial contract rents.

Section 882.725 New Construction: Working Drawings and Specifications

The owner must submit to the PHA the design architect's certification that the working drawings and specifications and proposed construction comply with HUD Housing Quality Standards, local codes and ordinances, and zoning requirements.

HAP Agreement and New Construction or Rehabilitation Period Housing Assistance Payments Contract Management

Generally, the sections under this heading are substantively the same as the parallel provisions in the January 1989 interim rule, with revisions to refer to new construction as appropriate. Section 882.732, however, contains a provision (not in § 882.731 of the January 1989 interim rule) that permits HUD to lower the initial contract rents to reflect any reduction in the amount necessary to amortize the mortgage, based on the cost method.

In addition, this rule (§ 882.740(b)) no longer requires that the HAP contract include a provision giving the owner a right to terminate the contract at the owner's sole option after two years. The two-year opt out provision could prevent housing that might otherwise qualify as replacement housing for public housing projects demolished or disposed of by a PHA under section 18 of the 1937 Act. (Section 18 requires that project-based assistance be for not less than 15 years to qualify as replacement housing.) Furthermore, the Department believes that a PHA should be able to expect that the assistance will be provided for the length of the HAP Contract before it expends the time and money to process applications for project-based assistance under subpart C.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule does not alter the amount of funding a PHA may receive. The rule, in accordance with the statutory mandate, merely permits, but does not require, a PHA to attach a portion of the assistance it provides under the Section 8 Certificate Program to units rather than have the assistance move with the families.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule conforms HUD regulations to a statutory requirement to permit PHAs to provide project-based assistance to units in newly constructed structures. To the extent that particular revisions have altered responsibilities, these revisions are in response to statutory changes and have increased the discretion of the non-Federal governmental entities.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because the rule concerns only a PHA's discretion to attach Certificate Program assistance to units. It does not affect the terms and conditions under which a family may qualify for assistance under the Certificate Program. The Certificate Program, itself, is a benefit to families because it assists eligible families to afford decent safe and sanitary housing.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Currently approved requirements have been assigned the OMB Control Number 2502–0388.

In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

Existing requirements applicable program reference	Description of information collection	Form used	Estimated no. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.703—PHA application for HUD approval to attach assistance to units.	Total no. of units proposed for project-based by bedroom size and funding source w/end date; rehab period and proposed termination date of HAP contract.	No prescribed form	200 PHAs	2 hrs. (400 hrs.).	$13.00 (average cost per hr. for PHA mgmnt. staff).	$5,200.00
882.709(b)(7) eligible properties	Flood hazards	Record of observation of insurance policy.	25 PHAs	¼ hr. (6.25 hrs.).	13.00	81.00
882.709(c) eligible property	Highrises ineligibility	Letter request	5 PHAs	¼ hr. (1.25 hrs.).	13.00	16.00
882.711(b)—pledging contracts	Owner submittal of financial documents if pledging agreement or HAP contract as security for financing and PHA review.	Lender documents	10 projects	2 hrs. (20 hrs.)	13.00	260.00
882.712(c)(1)(i)—relocation	Relocation notice to family	Letter	10 owners	4 hrs. (40 hrs.)	13.00	520.00
882.713(c)(7) other Federal requirements.	Davis-Bacon	SF308, HUD–4230A, WH Pub 1321, WH-347, WH348, HUD-11.	150 owners	40 hrs. (6,000 hrs.).	13.00	78,000.00
882.713(b) other Federal requirements.	NEPA and historical preservation	File documentation	100 PHAs	4 hrs. (400 hrs.).	13.00	5,200.00
882.714(b)(2)(i)—FMR exceptions	Approval of rents up to 110 percent FMR	Log or control mechanism.	40 PHAs	5 mins. or 0.083 hr. (3.3 hrs.).	13.00	43.00

Existing requirements applicable program reference	Description of information collection	Form used	Estimated no. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.714(b)(2)(ii) & (iii)—FMR exceptions.	Requests for FMR exceptions up to 120 percent FMR.	Letter	10 PHAs	8 hrs. (80 hrs.)	13.00	1,014.00
882.714(c)—rent reasonableness	Certification of rent reasonableness (rents are established by project and not by unit).	No prescribed format for certification.	200 projects	5 mins. or 0.083 hr. (3.3 hrs.).	13.00	217.00
882.715(a)(2)—Special rent adjustment.	Special adjustments—financial statements submitted by owner to support request for rent increase.	No prescribed form	10 owners	20 hrs. (20 hrs.).	13.00 (average cost per hr. for owner property mgmnt. staff).	260.00
882.720(a)—PHA selection of units.	Adoption of written selection policy	No prescribed form	200 PHAs	5 hrs. (1,000 hrs.).	13.00	13,000
882.722—Work write-up requirement.	Work write-ups prepared by owners	No prescribed form	200 owners	5 hrs. (1,000 hrs.).	13.00	13,000
882.732(d)—Notification of families on waiting list + vacancies.	Notification of families on waiting list of vacant units.	No prescribed form	50 projects	½ hr. per property (25 hrs.).	13.00	325.00
882.733(a) & (b)—Owner notification of completion.	Notification of evidence of completion submitted by owner.		200 owners	5 hrs. (1,000 hrs.).	13.00	13,000
882.733 delayed completion	Written agreement pertaining to items of delayed completion.	No prescribed format	10 projects	2 hrs. (20 hrs.)	13.00	260.00
882.740 HAP contract	HAP contract	Prescribed format	200 owners	¼ hr. (50 hrs.)	13.00	650.00
			200 PHAs	¼ hr. (50 hrs.)	13.00	650.00

New requirements applicable program reference [1]	Number of respondents	Frequency of response	Hours per response	Annual burden hours	Average hourly rate	Annual cost
Owner Application to PHA (882.720(b)(2))	100	1	120	12,000	$13	$156,000
PHA Letter Submitting Owner Applications to HUD (882.723 (b))	25	1	½	13	13	169
Owner Letter Submitting Working Drawings and Specifications to PHA (882.725)	25	1	½	13	13	169
Additional Items for Owner's Evidence of Completion to PHA (882.733 (b))	25	1	½	13	13	169

[1] Total: 100 owners; respondents: 25 PHSs; Total annaul burden hours: 12,039; Total annual cost: $156,507.

This rule was listed as Sequence Number 1041 in the Department's Semiannual Agenda of Regulations published on October 30, 1989, (54 FR 44702, 44719) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8))

List of Subjects

24 CFR Part 791

Grant programs—Housing and community development; Intergovernmental relations; Housing.

24 CFR Part 882

Grant programs—Housing and community development; Housing; Low and moderate income housing; Mobile homes; Rent subsidies.

Accordingly, the Department amends 24 CFR parts 791 and 882 as follows:

PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

1. The authority citation for part 791 is revised to read as follows:

Authority: Sec. 213, Housing and Community Development Act of 1974 (42 U.S.C. 1439); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 791.102, the last sentence in the definition of *Application for housing assistance* is revised to read as follows:

§ 791.102 Definitions.

* * * * *

Application for housing assistance. * * *

For the public housing and State agency programs and for project-based assistance in connection with new construction under part 882, subpart G of this chapter, the first application identifying a project site will be considered an application for housing assistance.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

3. The authority citation for part 882 is revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 882.106 [Amended]

4. In § 882.106(a)(2), remove the phrase "and under paragraph (a)(2) of § 882.719" and add, in its place, the phrase "and under paragraph (b)(2)(i) of § 882.714"

5. Part 882, subpart G is revised to read as follows:

Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

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882.703 Information to be submitted to HUD by the PHA concerning its plan to attach assistance to units.
882.704 HUD review of PHA plans to attach assistance to units.
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882.709 Eligible and ineligible properties: Housing types.
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882.714 Initial Contract Rents.
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882.721 Rehabilitation: Initial inspection and determination of unit eligibility.
882.722 Rehabilitation: Work write-ups.
882.723 New construction: PHA evaluation and technical processing.
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HAP Agreement and New Construction or Rehabilitation Period

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882.731 Owner selection of contractor.
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882.740 Housing Assistance Payments Contract (Contract).
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882.750 Responsibilities of the PHA.
882.751 Responsibilities of the Owner.
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Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

General

§ 882.701 Purpose and applicability.

(a) This subpart G establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHA for its Section 8 Certificate Program. This subpart G implements section 8(d)(2) of the 1937 Act, which directs the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 assistance provided by the PHA under the Certificate Program. Within this 15 percent limit, the PHA may attach a Section 8 assistance contract to a structure where the owner agrees to construct or rehabilitate the structure other than with assistance provided under the United States Housing Act of 1937. The purpose of project-based assistance in the Certificate Program is to induce property owners to construct standard, or upgrade substandard, rental housing stock, and make it available to lower income families at rents within the Section 8 Existing Housing Fair Market Rents.

(b) This subpart G refers to assistance that is attached to units as "project-based" assistance to distinguish this assistance from the "tenant-based" assistance provided by the Certificate Program under subparts A, B, C, and F of this part and also by the Housing Voucher Program under 24 CFR part 887. With tenant-based assistance, the assisted unit is selected by the Family. The PHA then enters into an assistance Contract, which only covers a single unit and the specific assisted Family. If the Family moves out of a unit, the assistance contract terminates. The Family may move with continued assistance under the Program, and may find a new unit anywhere in the PHA jurisdiction. With project-based assistance, the PHA enters into an assistance Contract to make housing assistance payments for a specified term provided the unit is occupied by an eligible family. (The unit may be vacant for a limited time.) To fill vacant project-based units, the PHA refers families from its waiting list to the project owner. Because the assistance is tied to the unit, a family that moves from the unit does not have any right to continued assistance.

(c) Except as otherwise expressly modified or excluded by this subpart G, all provisions of subparts A and B of this part apply to project-based assistance under this subpart G.

(d) The following sections in subparts A and B of this part, which implement the tenant-based aspect of the Certificate Program, do not apply to project-based assistance under this subpart G: § 882.103, *"Finders-Keepers" policy;* § 882.208, *Activities to encourage participation by Owners and others;* and § 882.209(m), *Continued participation when Participant Family moves.* Other sections in this subpart G identify other tenant-based provisions of subparts A and B of this part that do not apply to project-based assistance under this subpart G.

(e) HUD does not provide any separate funding for project-based assistance. Funding for project-based assistance is part of the ACC funding authority for the PHA's entire Section 8 Certificate Program.

§ 882.702 Additional definitions.

The following definitions apply to assistance subject to this subpart G, in addition to the definitions in § 882.102:

Agreement to Enter into Housing Assistance Payments Contract ("Agreement"). A written agreement between the Owner and the PHA that, upon satisfactory completion of the new construction or the rehabilitation in accordance with requirements specified in the Agreement, the PHA will enter into a Housing Assistance Payments Contract with the Owner.

15-Percent Limit. Fifteen percent of the total of the number of units under ACC for a PHA's Section 8 Certificate Program.

Funding Source. The ACC funding authority from which the HAP Contract is to be funded. Funding authority under the ACC that was appropriated by Congress before Federal fiscal year 1988 constitutes a single Funding Source, i.e., the pre-FY1988 Funding Source. For funding authority appropriated in Federal fiscal year 1988 and later, each funding increment identified in the ACC is a separate Funding Source.

§ 882.703 Information to be submitted to HUD by the PHA concerning its plan to attach assistance to units.

(a) *Requirements.* A PHA may attach assistance to units in accordance with this subpart G if:

(1) The number of project-based units in the PHA's Certificate Program does not exceed the 15-Percent Limit. The HUD-approved maximum number of units that may be project-based is based on the assumption that units in a PHA's Certificate Program that are identified as reserved but not under ACC will be under ACC before Agreements for project-based units are executed. The PHA, however, before entering into an Agreement for project-based units, must ensure that the number of project-based units does not exceed fifteen percent of the number of units actually under ACC for its Certificate Program.

(2) The number and unit sizes for units to which assistance will be attached are consistent with the number and unit size distribution for the Funding Source.

(3) The termination date for each HAP Contract term is within the ACC term for the Funding Source.

(b) *PHA notification to HUD of intent to attach assistance to units.* Before inviting Owner applications for project-based assistance, the PHA must submit the following information to the HUD Field Office for review. The PHA submission need not identify specific structures or units to be assisted. The PHA shall submit the following information:

(1) The number of units currently under ACC, plus the number of units reserved but not yet under ACC, for the PHA's Section 8 Certificate Program;

(2) The total number of units for which the PHA is requesting approval to attach assistance;

(3) The number of units by unit size (number of bedrooms) to be assisted from each Funding Source;

(4) The estimated termination dates for HAP Contracts to be executed for project-based subsidies, and the termination date of the ACC for the Funding Source for each HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.704 HUD review of PHA plans to attach assistance to units.

(a) *Purpose of review.* The HUD Field Office shall review the information submitted by the PHA under § 882.703(b) only to determine whether the requirements of § 882.703(a) are satisfied.

(b) *Notice to PHA.* (1) If the requirements of § 882.703(a) are satisfied, the Field Office shall authorize the PHA to proceed in accordance with this subpart G.

(2) The Field Office shall endeavor to notify the PHA of approval or disapproval within 20 calendar days after the date of the PHA submittal under § 882.703(b) (date of postmark, if mailed, or date of receipt by HUD, if hand-delivered).

(3) If the submission is approved, the Field Office shall notify the PHA that the PHA may enter into Agreements for project-based assistance, subject to the requirements of this subpart G. The approval letter shall specify the maximum number of units, by unit size and Funding Source, for which the PHA may execute Agreements, and shall specify, for each Funding Source, the ACC expiration date (last date of term). The HAP Contract term may not end after the ACC expiration date of the Funding Source from which the HAP Contract is to be funded.

(4) If any of the requirements of § 882.703(a) are not satisfied, the Field Office shall not approve the PHA submission. The Field Office shall notify the PHA by letter of the reasons for disapproval.

§ 882.705 Annual Contributions Contract; schedule of leasing.

Section 882.206, *Annual Contributions Contract; schedule of leasing,* applies. With respect to units assisted under this subpart G, the Field Office shall authorize the extension of the schedule of leasing (see § 882.206(c)) to accommodate the time needed to complete the new construction or rehabilitation of units that are under Agreement.

§ 882.706 Rehabilitation: Housing quality standards, including site and neighborhood performance requirements.

Section 882.404(b), *Site and neighborhood-performance requirements,* applies to rehabilitated units, in addition to the housing quality standards in § 882.109, or other standards approved by HUD.

§ 882.707 New construction: Housing quality standards and construction standards.

Section 882.109, *Housing quality standards,* applies to new construction units.

§ 882.708 New construction: Site and neighborhood standards.

Proposed sites for new construction units must be approved by HUD as meeting the following site and neighborhood standards:

(a) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.

(c)(1) The site must not be located in an area of minority concentration, except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(2) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) for further guidance on this criterion).

(3)(i) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, which, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for lower income minority families and in relation to the racial mix of the locality's population.

(ii) Units may be considered "comparable opportunities" if they have the same household type (elderly, handicapped, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for lower income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(E) Minority families have benefitted from local activities (*e.g.,* acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for

minority families outside of areas of minority concentration.

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the Section 8 Certificate and Housing Voucher Programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need," however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower income persons.

(e) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(g) Except for new construction housing designed for elderly persons, travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

§ 882.709 Eligible and ineligible properties: Housing types.

(a) Section 882.110, *Types of housing*, does not apply. Newly constructed and existing structures of various types may be appropriate for attaching assistance to the units under this subpart G, including single-family housing and multifamily structures.

(b) A PHA may not attach assistance under this subpart G to units in the following types of housing:

(1) Housing that is owned by the PHA (or by an entity controlled by the PHA) administering the ACC under which assistance is to be provided;

(2) Housing that is HUD-owned;

(3) Housing for which the construction or rehabilitation, required to qualify for assistance under this subpart G, is started before HAP Agreement execution;

(4) Shared housing; nursing homes; and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care;

(5) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(6) Housing located in the Coastal Barrier Resources System designated under the coastal Barrier Resources Act; or

(7) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i)(A) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79); or

(B) Less than a year has passed since FEMA notification regarding such hazards; and

(ii) The PHA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(c) A PHA may attach assistance under this subpart G to a highrise elevator project for Families with children only if HUD determines there is no practical alternative. HUD may make this determination for a PHA's project-based assistance, in whole or in part, and need not review each project on a case-by-case basis.

(d) A PHA may attach assistance to units under this subpart G for use as single room occupancy (SRO) housing only if—

(1) The property is located in an area in which there is a significant demand for these units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the attaching of assistance to these units; and

(3) The PHA and the unit of general local government certify to HUD that the property meets applicable local health and safety standards.

(e) Assistance may not be attached to a unit that is occupied by an Owner; however, cooperatives are considered to be rental housing for purposes of this subpart G.

(f) For any Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured) or FmHA Section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent otherwise payable by the Eligible Family under this subpart G is less than the subsidized rent (which subsidy shall not be reduced on account of any assistance provided under this subpart G).

(g) In no event may any occupant of a unit with project-based assistance under this subpart G receive the benefit of any of the following: any other form of Section 8 assistance, rent supplement, Section 23 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.710 Rehabilitation: Minimum expenditure requirement.

To qualify as rehabilitation under this subpart G, existing structures must require a minimum expenditure of $1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(a) Upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(b) Repair or replace major building systems or components in danger of failure;

(c) Make improvements to the property essential to permit use of the property by handicapped persons; or

(d) Convert or merge units to provide housing for large Families.

§ 882.711 Prohibition against new construction or rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP Contract.

(a) Assistance may not be attached to any unit which was in the five years before execution of the Agreement, or will be, constructed or rehabilitated with other assistance under the U.S. Housing Act of 1937 (*e.g.*, public housing (development or modernization), rental rehabilitation grants under 24 CFR part 511, housing development grants under 24 CFR part 850, or other Section 8 programs). In addition, a unit to which

assistance is to be attached under this subpart G may not be rehabilitated with flexible subsidy assistance under part 219 of this chapter. HUD may approve attachment of assistance to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s) where attachment of project-based assistance would further the purposes of the sale of the public housing project to the corporation.

(b) If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that the financing documents do not modify the Agreement or HAP Contract, and do not contain any requirements inconsistent with the Agreement or HAP Contract. Any pledge of the Agreement or HAP Contract must be limited to amounts payable under the HAP Contract in accordance with the terms of the HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.712 Relocation.

(a) *Prohibition against displacement of residential tenants from assisted units.* Constructing or rehabilitating units to be subsidized with assistance under this subpart G may not result in the displacement of residential tenants from the units to be subsidized. A residential tenant who is displaced, either through a waiver of this requirement or in violation of this requirement, may qualify as a displaced person under paragraph (b) of this section.

(b) *Uniform Relocation Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and governmentwide implementing regulations at 49 CFR part 24 set forth relocation assistance requirements that apply to displaced persons.

(1) For the purposes of this subpart G, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves permanently and involuntarily as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this subpart G. Displaced person includes:

(i) Any person required by the Owner to move permanently from the property (building or complex) on or after the date that the Owner submits to a PHA an application to project-base assistance that is later approved and funded, unless:

(A) The person is evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property (building or complex) after the Owner's submission of the application but received prior written notice of the expected displacement; or

(C) The PHA determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project, and the HUD Field Office concurs in that determination.

(ii) A person required by the Owner to move permanently from the property (building or complex) before the Owner submits an application to project-based assistance, if the PHA or HUD determines that the displacement resulted from acquisition, rehabilitation, or demolition for the project.

(iii) A person who is temporarily relocated under the provisions of paragraph (c) of this section, but is not reimbursed for reasonable out-of-pocket expenses required by paragraph (c)(1)(iv) of this section and does not return to the property.

(2) The PHA may, at any time, request a HUD determination as to whether a displacement is covered by the URA.

(3) A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR part 24.

(c) *Temporary relocation.* The following policies apply to temporary relocation of tenants from a property (building or complex). The policies apply only to lawful residential tenants (but not to owner-occupants or businesses) who are temporarily relocated following submission of the Owner's application to the PHA. The following policies do not apply to tenants who commence occupancy after the Owner's submission of an application if, before they commence occupancy, they are provided written notice from the Owner of the impending new construction or rehabilitation and possible temporary relocation, or whose tenancy is terminated for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement.

(1) Tenants may not be required to move temporarily from a property (building or complex) unless:

(i) The Owner has given the tenants advance written notice and appropriate advisory services;

(ii) Decent, safe, and sanitary temporary housing is available;

(iii) The temporary relocation period will not exceed 12 months; and

(iv) The Owner must reimburse tenants for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

(2) The PHA must ensure that all the temporary relocation requirements are met. Preliminary or ongoing administrative funds may be used for costs of PHA advisory services for temporary relocation of tenants to be assisted under the program.

(3) Tenants who do not believe they have received temporary relocation opportunities, services, or payments in accordance with this section may appeal to the PHA and must be given an informal hearing on this appeal.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.713 Other Federal requirements.

(a) *Equal opportunity and related requirements.* Participation in this program requires compliance with the Equal Opportunity requirements specified in § 882.111, with section 504 of the Rehabilitation Act of 1973, and with the Age Discrimination Act of 1975. The PHA must also comply with its equal opportunity housing plan.

(b) *Environmental requirements.* Activities under this subpart G are subject to HUD environmental regulations at 24 CFR part 50. A PHA may not attach assistance to a unit unless, before the PHA enters into an Agreement to provide project-based assistance for the unit, HUD has completed the environmental review required by part 50 of this title, including the applicable related laws and authorities under § 50.4, and HUD has notified the PHA of approval to proceed.

(c) *Other Federal requirements.* The following requirements must be met, where applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 504 of the Rehabilitation Act of 1973;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over $10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the construction or rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

(8) The provisions of part 24 of this title relating to the employment, engagement of services, awarding contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(9) For an application involving new construction, local government review and consistency with the Housing Assistance Plan under 24 CFR part 791.

(10) For an application involving new construction, intergovernmental review procedures in 24 CFR part 52.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.714 Initial contract rents.

(a) *General.* Section 882.106, *Contract Rents,* does not apply. HUD approves the initial Contract Rents for all units to which assistance is to be attached under this subpart G.

(b) *Fair Market Rent limitation*—(1) *General.* The initial Gross Rent (initial Contract Rent plus any applicable Utility Allowance) for any unit approved under this subpart G shall not exceed the published Section 8 Existing Housing Fair Market Rent in effect for the unit on the date the Agreement is executed, except as provided in paragraph (b)(2) of this section.

(See also § 882.730(b), *Contract Rents in Agreement)*

(2) *Exception rents.* (i) Upon request from a PHA, HUD may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved by HUD under this paragraph (b)(2)(i) and by the PHA under paragraph (a)(2) of § 882.106, *Contract Rents,* may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program, unless HUD approves a higher percentage. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(ii) HUD may approve, upon request from a PHA, maximum initial Gross Rents for all units of a given size of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county, or similar locality. Any such request must be supported by rental housing survey data that is statistically representative of rent levels for the area. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives, and evidence of a market where the housing supply exceeds demand and a high rate of vacancies exists (soft market). HUD will not approve requests under this paragraph (b)(2)(ii) for units in a soft market. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(iii) On the basis of a showing by the PHA that special circumstances apply to units of a given size limited to a specific neighborhood, and by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and the units cannot be rented for less, HUD may approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. Approval under this paragraph (b)(2)(iii) shall be based upon substantially the same criteria as under paragraph (b)(2)(ii) of this section, except for the last sentence of that paragraph. Approval under this paragraph (b)(2)(iii) will not be granted for a neighborhood that is located in a soft market.

(c) *Rent reasonableness limitation.* (1) The initial Contract Rent must be:

(i) Reasonable in relation to rents currently being charged for units in the private unassisted market that are comparable to the newly constructed units or to the units after they are rehabilitated, taking into account the location, size, structure type, quality, amenities, facilities, and management and maintenance service of the unit; and

(ii) Not in excess of rents charged by the Owner for comparable unassisted units.

(2) For an assisted unit that is subject to local rent control, comparable units are rent-controlled units. However, for an assisted unit that is not subject to local rent control while it is assisted (regardless of whether the unit would be subject to such control if it were not assisted), comparable units are units that are not subject to rent-control.

(3) If a project is financed with a HUD insured or coinsured multifamily mortgage, then, in addition to meeting the other requirements of this paragraph (c), the initial Contract Rent for each assisted unit shall not exceed an amount determined by HUD to be necessary to amortize the insured or coinsured mortgage.

(d) *Congregate housing.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for a 0-bedroom unit, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining, and sanitary facilities and the provision of special amenities, maintenance or management services, or a combination of both.

(e) *Independent Group Residences.* (1) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased; for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(2) One Contract shall be executed for each Independent Group Residence. A separate Lease shall be executed for each Family that resides in an Independent Group Residence. A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent, or the Family's income eligibility.

(3) For purposes of determining the housing assistance payment for each Family, HUD shall allocate the Gross Rent, which is subject to paragraphs (b) and (c) of this section, among the total number of Families in the Independent Group Residence. To determine the portion of the Gross Rent to be allocated to each individual receiving Section 8 assistance, the Gross Rent is divided by the total number of occupants in the Independent Group Residence other

than the Resident Assistant(s), if any, who may occupy no more than one bedroom. For example, if three Section 8 recipients and a Resident Assistant reside in a 4-bedroom unit, the housing assistance payment for each Section 8 recipient would be based on ⅓ of the Gross Rent.

(4) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

(f) *Single room occupancy units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraphs (b)(2)(ii) or (b)(2)(iii) of this section, the SRO exception rent shall be 75 percent of the exception rent that applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the initial rent exceed 75 percent of 120 percent (i.e., 90 percent) of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

(g) *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.715 Contract Rent adjustments.

(a) Contract Rents shall be adjusted as provided in paragraphs (a)(1) and (a)(2) of this section, upon request of the Owner. The unit, however, must be in Decent, Safe, and Sanitary condition, and the Owner must otherwise be in compliance with the terms of the Lease and the Contract. Subject to § 882.714(c) (the rent reasonableness limitation), adjustments to Contract Rents shall be as follows:

(1) *Annual adjustments.* (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (part 888 of this chapter) most recently published by HUD in the **Federal Register.**

(ii) Contract Rents are subject to post-audit change in accordance with HUD requirements, including the correction of errors in establishing the initial Contract Rents or in adjusting the Contract Rents.

(2) *Special adjustments.* A PHA may make a special adjustment, subject to HUD approval, to reflect increases in actual and necessary expenses of owning and maintaining the unit that have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided in paragraph (a)(1) of this section. The Owner must submit financial statements to the PHA which clearly support the increase.

(b) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in § 882.714(c)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.716 Limitation on housing design and amenities.

Housing assisted under this subpart G shall be modest in design. Amenities in these projects must be limited to those amenities, as determined by HUD, that are generally provided in unassisted, decent, safe, and sanitary housing for lower income families in the market area. The use of more durable, high-quality materials to control or reduce maintenance, repair and replacement cost is not considered an excess amenity.

Owner Application Submission to HAP Agreement

§ 882.720 PHA unit selection policy.

(a) *General.* The PHA must adopt a written policy establishing procedures for Owner submission of applications and for PHA selection of units to which assistance is to be attached and must submit the policy to the HUD Field Office for review and approval. The PHA must select units in accordance with its approved selection policy. PHAs are encouraged to establish preferences for units in troubled, HUD-insured subsidized multifamily projects, and for units to be used as limited equity cooperatives. The PHA's written selection policy must comply with the requirements of paragraph (b) of this section.

(b) *Specific selection policy requirements.* The HUD-approved PHA's selection policy adopted by the PHA must provide for the following:

(1) The PHA's selection policy must provide that the PHA will advertise in a newspaper of general circulation that the PHA will accept applications for assistance under this subpart G for specific projects. The advertisement may not be published until after the later of HUD authorization to implement a project-based program or ACC execution. The advertisement must: run for a minimum of 30 days, specify an application deadline of at least 30 days, specify the number of units the PHA estimates it will be able to assist under the funding the PHA is making available for this purpose, and state that only applications submitted in response to the advertisement will be considered.

(2) The PHA's written selection policy must identify, and specify the weight to be given to, the factors the PHA will use to rank and select applications. These factors must include consideration of: Site; design; previous experience of the Owner and other participants in development, marketing, and management; and feasibility of the project as a whole (including likelihood of financing and marketability). The PHA may add other factors, such as responsiveness to local objectives specified by the PHA.

(3) The Owner's submission to the PHA of applications containing:

(i) A description of the housing to be constructed or rehabilitated, including the number of units by size (square footage), bedroom count, bathroom count, sketches of the proposed new construction or rehabilitation, unit plans, listing of amenities and services, estimated date of completion.

For rehabilitation, the description must describe the property as is and must also describe the proposed rehabilitation;

(ii) Evidence of site control, and for new construction identification and description of the proposed site, site plan and neighborhood;

(iii) Evidence that the proposed new construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that the needed rezoning is likely and will not delay the project;

(iv) The proposed contract rent per unit, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the

average monthly cost for each unit type for the first year of occupancy;

(v) Information concerning temporary relocation of site occupants and a certification from the Owner that there will be no displacement of residential tenants from units to be assisted under this subpart G;

(vi) The identity of the Owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties that would be a violation of the Agreement or the Contract; and information on the qualifications and experience of the principal participants. Information concerning any participant who is not known at the time of the Owner's submission must be provided to the PHA as soon as the participant is known;

(vii) The Owner's plan for managing and maintaining the units;

(viii) Evidence of financing or lender interest and the proposed terms of financing;

(ix) The proposed term of the contract; and

(x) Such other information as the PHA believes necessary.

(c) A PHA may select units to which assistance is to be attached, without advertising under paragraph (b)(1) of this section and without applying the selection factors otherwise required by paragraph (b)(2) of this section, if attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-_____)

§ 882.721 Rehabilitation: Initial inspection and determination of unit eligibility.

(a) Before selecting a unit, the PHA must determine that the application is responsive to and in compliance with the PHA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements, and that the proposed initial Gross Rents are within the Fair Market Rent limitation under § 882.714. The PHA must inspect the property to determine that the property meets the $1000 per assisted unit rehabilitation requirement under § 882.710. If the property meets this rehabilitation requirement, the PHA must determine the specific work items that are needed to bring each unit to be assisted up to the Housing Quality Standards specified in § 882.706 (or other standards as approved in the PHA's application) and to complete any other repairs needed to meet the $1000 per assisted unit rehabilitation requirement.

(b) Before selecting a unit, the PHA must seek and obtain HUD environmental clearance in accordance with § 882.713(b) and HUD approval that the project complies with the limitation on housing design and amenities in § 882.716, and must submit a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy. HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the Owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

(c) In addition to ascertaining whether the property meets the above rehabilitation requirement, the PHA must also consider whether the property is eligible housing within the meaning of § 882.709; meets the other Federal requirements in § 882.713 and the site and neighborhood standards cross-referenced in § 882.706; can be rehabilitated without causing displacement of residential tenants from units to be assisted (see § 882.712); and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with § 882.711. The PHA must also determine the number of current tenants that are lower income families.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.722 Rehabilitation: Work write-ups.

The Owner must prepare work write-ups and, where determined necessary by the PHA, specifications and plans. The PHA has flexibility to determine the appropriate documentation to be submitted by the Owner based on the nature of the identified rehabilitation. The work write-ups must address the specific work items identified by the PHA under § 882.721(a).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.723 New construction: PHA evaluation and technical processing.

(a) The PHA must determine that the application is responsive to and in compliance with the PHA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements, and that the proposed initial Gross Rents are within the Fair Market Rent limitation under § 882.714. The PHA must also consider whether the property is eligible housing within the meaning of § 882.709; meets the other Federal requirements in § 882.713 and the site and neighborhood standards in § 882.708; and will be constructed with other than assistance under the U.S. Housing Act of 1937 in accordance with § 882.711.

(b) The PHA shall submit to the HUD Field Office those applications determined by the PHA to be eligible for further processing, and must submit a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy. The PHA's submission must not exceed the number of uncommitted units for which the PHA is authorized to project-base assistance in connection with new construction. If the number of units contained in applications the PHA has determined to be eligible for further processing exceeds the number for which the PHA is authorized to project-base assistance, the PHA may submit only the top-ranked applications. HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the Owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-_____)

§ 882.724 New construction: HUD Field Office review of applications.

(a) The HUD Field Office shall review the Owner applications submitted by a PHA to determine compliance with the requirements concerning:

(1) Site and neighborhood standards in § 882.708;

(2) Limitation on housing design and amenities in § 882.716;

(3) Previous participation of the principals of the Owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members,

shareholders, investors, and other parties having a substantial interest;

(4) Local government review and consistency with the Housing Assistance Plan under 24 CFR part 791;

(5) Intergovernmental review procedures in 24 CFR part 52; and

(6) Environmental impact under the National Environmental Policy Act of 1969 in accordance with 24 CFR part 50 and under the related laws and authorities set forth in 24 CFR 50.4.

(b) The HUD Field Office shall determine the initial Contract Rents (see § 882.714(a)).

(c) The HUD Field Office shall advise the PHA whether an application meets the requirements referred to in paragraph (a) of this section. For any application that does not meet these requirements, the HUD Field Office shall specify the reasons why the application does not meet the requirements.

§ 882.725 New construction: Working drawings and specifications.

Before an Agreement is executed for new construction units, the Owner must submit the design architect's certification that the proposed new construction reflected in the working drawings and specifications comply with Housing Quality Standards, local codes and ordinances, and zoning requirements.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-_____)

HAP Agreement and New Construction or Rehabilitation Period

§ 882.730 Agreement to enter into Housing Assistance Payments Contract, and Contract Rents in Agreement.

(a) *Agreement.* The PHA must enter into an Agreement with the Owner in the form prescribed by HUD for assistance provided under this subpart G. The Agreement must be executed before the start of any new construction or rehabilitation, to be performed under the Agreement. Under the Agreement, the Owner agrees to construct the units in accordance with the PHA-approved working drawings and specifications or to rehabilitate the units in accordance with the PHA-approved work write-ups.

(b) *Contract Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with § 882.714, *Initial Contract Rents*) that will apply to the units after they are constructed or rehabilitated. The amounts of the Contract Rents that are listed in the Agreement or, if applicable, as lowered under § 882.732(c), shall be the initial Contract Rents upon execution of the Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution the Contract Rents may be adjusted during the term of the Contract in accordance with § 882.715).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.731 Owner selection of contractor.

The Owner is responsible for selecting a competent contractor to undertake the new construction or rehabilitation work under the Agreement. The Owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor, to perform such work, that fails to provide a certification that neither it nor its principals is presently debarred, suspended, or placed in ineligibility status under 24 CFR part 24 or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR part 5. The PHA must promote opportunities for minority contractors to participate in the program.

§ 882.732 New construction or rehabilitation period.

(a) *Timely performance of work.* After the Agreement has been executed, the Owner must promptly proceed with the construction or rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the PHA may terminate the Agreement or take other appropriate action.

(b) *Inspections.* The PHA must inspect during construction or rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carried out to ensure that the work meets the levels of materials specified in the work write-ups or working drawings and specifications, and meets typical levels of workmanship in the area.

(c) *Changes.* The Owner must obtain prior PHA approval for any changes from the work specified in the Agreement that would alter the design or the quality of the required new construction or rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on establishing lower initial Contract Rents in the amount determined by HUD. If the Owner makes any changes without prior PHA approval, the PHA may request HUD to lower the initial Contract Rents in the amount determined by HUD, and may require the Owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial Contract Rents, however, shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason. When a HUD insured or a HUD coinsured multifamily mortgage is used to finance new construction or rehabilitation of the units to which assistance is to be attached under this subpart G, HUD may lower the initial Contract Rents to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage.

(d) *Notification of vacancies.* At least 60 days before the scheduled completion of the new construction or rehabilitation, the Owner must notify the PHA of any units expected to be vacant on the anticipated effective date of the Contract. The PHA must refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner must notify the PHA which units are vacant. (See also § 882.753).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.733 New construction or rehabilitation completion.

(a) *Notification of completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* To evidence completion of the work the Owner must furnish the PHA with:

(1) A certificate of occupancy or other official approvals as required by the locality.

(2) A certification by the Owner that:

(i) The work has been completed in accordance with the requirements of the Agreement;

(ii) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(iii) The unit(s) has been constructed or rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) Unit(s) built before 1978 is in compliance with § 882.109(i) (*Lead-based paint*); and

(v) The Owner has complied with any applicable labor standards requirements in the Agreement.

(3) For projects where HUD construction inspection is not required during construction, a certification from the inspecting architect stating that the units have been constructed in accordance with the certified working drawings and specifications, Housing Quality Standards, local codes and ordinances, and zoning requirements.

(c) *Review and inspections.* The PHA must review the evidence of completion for compliance with paragraph (b) of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the Housing Quality standards or other standards approved by HUD for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(d) *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the PHA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the PHA may accept the unit(s). The PHA must require the Owner to deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to ensure completion of the delayed items. The PHA and Owner must also execute a written agreement, specifying the schedule for completion of these items. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0388 and ———.)

Housing Assistance Payments Contract

§ 882.740 Housing Assistance Payments Contract (Contract).

(a) *Required form.* The PHA must enter into a Contract with the Owner in the form prescribed by HUD for assistance provided under this subpart G.

(b) *Term of Contract.* The Contract term may not be less than two years and may not extend beyond the ACC expiration date for the Funding Source. Within these limitations, the PHA has the sole discretion to determine the Contract term. For example, assuming that the ACC expiration date for the applicable Funding Source is June 30, 2003, and the effective date of a Contract will be July 1, 1989, that Contract could have a fixed term of 2 to 14 years.

(c) *Renewal of Contracts.* A Contract that is attached to a structure under this subpart G shall (at the option of the PHA but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial Contract and renewals shall not exceed 15 years.

(d) *Time of execution.* The PHA and Owner must execute the Contract if the PHA accepts the unit(s) under § 882.733. The effective date of the Contract may not be earlier than the date of PHA inspection and acceptance of the unit(s).

(e) *Units under lease.* After commencement of the Contract term, the PHA shall make the monthly housing assistance payments in accordance with the Contract for each unit occupied under lease by a Family.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.741 Reduction of number of units covered by Contract.

Section 882.512, *Reduction of number of units covered by Contract,* applies.

Management

§ 882.750 Responsibilities of the PHA.

Section 882.116, *Responsibilities of the PHA,* applies, except paragraphs (d), (f), and (j). The PHA must also:

(1) Brief the Family in accordance with § 882.755(d);

(2) Obtain requests for participation from Owners, and select projects;

(3) Approve Contract Rent adjustments, and make rent reasonableness determinations;

(4) Inspect the project before, during, and upon completion of, new construction or rehabilitation; and

(5) Ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 882.751 Responsibilities of the Owner.

Section 882.117, *Responsibilities of the Owner,* applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement.

§ 882.752 Obligations of the Family.

Section 882.118, *Obligations of the Family,* applies; however, §§ 882.118 (a)(4) and (a)(5), which pertain to shared housing do not apply (because shared housing is not an eligible housing type under this subpart G).

§ 882.753 Family participation.

Section 882.209, *Selection and participation,* does not apply, except as it is expressly made applicable by this section.

(a) *Selection for participation.* Section 882.209(a)(1) does not apply. All other paragraphs in § 882.209(a) apply, except paragraphs (a)(4)(ii), (a)(4)(iii), and (a)(6). For purposes of this subpart G, a Family becomes a participant when the Family and owner execute a Lease for a unit with project-based assistance.

(b) *Determining eligibility of in-place Families.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible Family (including a Single Person) and the PHA selects the unit, the Family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the Family to be placed on the waiting list. (The PHA is authorized, under § 812.3(b)(1) of this chapter and consistent with other applicable requirements of § 812.3, to permit occupancy of the project by Single Persons residing in the project at the time of conversion to project-based assistance to prevent displacement.) A PHA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) *Filling vacant units.* (1) When the owner notifies the PHA of vacancies in the units to which assistance is attached, the PHA will refer to the Owner one or more Families of the appropriate size on its Section 8 Existing Housing waiting list. A Family that refuses the offer of a unit assisted under this subpart G keeps its place on the waiting list.

(2) All vacant units must be rented by the Owner to eligible Families referred by the PHA from its Section 8 Existing Housing waiting list. The PHA must determine eligibility for participation in accordance with HUD requirements.

(3) If the PHA does not refer a sufficient number of interested applicants on the PHA waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise for or solicit applications from eligible very low income Families, or, if authorized by the PHA in accordance with HUD requirements, lower income Families. The Owner must refer these Families to the PHA to determine eligibility.

(4) The Owner is responsible for screening and selection of tenants. The Owner may refuse any Family, provided the Owner does not unlawfully discriminate. If the owner rejects a Family and the Family believes that the rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue is not resolved promptly, the Family may file a complaint with HUD.

(d) *Briefing of Families.* When a Family is selected to occupy a project-based unit, the PHA must provide the Family with information concerning the tenant rent and any applicable utility allowance. The Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(1) Family and Owner responsibilities under the Lease and contract;

(2) Significant aspects of Federal, State, and fair housing law;

(3) The fact that the subsidy is tied to the unit and that the Family must occupy a unit constructed or rehabilitated under the program;

(4) The likelihood of the Family receiving Certificate after the HAP Contract expires;

(5) The Family's options under the program, if the Family is required to move because of a change in Family size or composition;

(6) The advisability and availability of blood level screening for children under seven years of age and HUD's requirements for inspecting, testing, and in certain circumstances, abating lead-based paint; and

(7) Information on the PHA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (under § 882.757), and of the procedures for requesting a hearing.

(e) *Continued assistance for a Family when the contract is terminated.* If the Contract for the unit expires or if the PHA terminates the Contract for the unit:

(1) The PHA must issue the assisted Family in occupancy of a unit a Certificate of Family Participation for assistance under the PHA's Certificate Program unless the PHA has determined that it does not have sufficient funding for continued assistance for the Family, or unless the PHA denies issuance of a Certificate in accordance with § 882.210.

(2) If the unit is not occupied by an assisted Family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit shall be used for the PHA's Certificate Program.

(f) *Amount of rent payable by Family to Owner.* Section 882.209(g), *Amount of rent payable by Family to Owner,* applies.

(g) *Lease requirements.* The Lease between the Family and the owner must be in accordance with § 882.759 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

§ 882.754 Maintenance, operation and inspections.

Section 882.211, *Maintenance, operation and inspections,* does not apply. Instead, paragraphs (a), (b), (c), and (d) of § 882.516, *Maintenance, operation and inspections,* apply.

§ 882.755 Reexamination of Family income and composition.

Section 882.212, *Reexamination of Family income and composition,* does not apply. Instead, § 882.515, *Reexamination of Family income and composition,* applies.

§ 882.756 Overcrowded and underoccupied units.

(a) Section 882.213, *Overcrowded and oversized units,* does not apply.

(b) If the PHA determines that a contract unit is not decent, safe, and sanitary because of an increase in Family size which causes the unit to be overcrowded or that a Contract unit is larger than appropriate for the size of the Family in occupancy under the PHA's occupancy standards, Housing Assistance Payments with respect to the unit may not be terminated for this reason. The Owner, however, must offer the Family a suitable alternative unit if one is available and the Family shall be required to move. If the Owner does not have available a suitable unit within the Family's ability to pay the rent, the PHA (if it has sufficient funding) must offer Section 8 assistance to the Family or otherwise assist the Family in locating other standard housing in the PHA's jurisdiction within the Family's ability to pay, and require the Family to move to such a unit as soon as possible. The Family shall not be forced to move, nor shall Housing Assistance Payments under the Contract be terminated for the reasons specified in this paragraph, unless the Family rejects, without good reason, the offer of a unit that the PHA judges to be acceptable.

§ 882.757 Informal review or hearing.

(a) Section 882.216(a), *Informal review of PHA decision on application for participation,* applies, except §§ 882.216(a)(3)(ii), (a)(3)(iii), and (a)(3)(iv). In addition to the matters listed in § 882.216(a)(3)(i), the PHA is not required to provide an informal review, in accordance with § 882.216(a), to review the PHA's determination that the Contract unit is not appropriate for the Family size and composition under the PHA's occupancy standards.

(b) Section 882.216(b), *Informal hearing on PHA decision affecting participant Family,* applies, except § 882.216(b)(1)(iv) does not apply because there is no right to continued participation in the PHA program for an assisted Family that wants to move to another dwelling unit.

§ 882.758 Grounds for denial or termination of assistance.

Section 882.210, *Grounds for denial or termination of assistance,* applies, except that for purposes of this subpart G the grounds for denial of assistance in § 882.210(b) apply only to denial of participation in the program.

§ 882.759 Assisted tenancy and termination of tenancy.

(a) Section 882.215, *Assisted tenancy,* does not apply.

(b) *Term of Lease.* The term of a Lease, including a new Lease or a Lease amendment, executed by the Owner and the Family must be for at least one year, or the remaining term of the Contract if the remaining term of the Contract is less than one year.

(c) *Termination of tenancy.* (1) Subpart A of part 247 of this title, Eviction from Certain subsidized and HUD-Owned Projects, applies, except § 247.4(d).

(2) The Lease may contain a provision permitting the Family to terminate the Lease on not more than 60 days advance written notice to the Owner. In the case of a Lease term for more than one year, the Lease must contain a provision permitting the Family to terminate the

lease on such notice after the first year of the term.

(3) The Owner may offer the Family a new Lease for execution by the Family for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the Family written notice of the offer at least 60 days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time for acceptance by the Family. Failure by the Family to accept the offer of a new lease in accordance with this paragraph shall be "other good cause" for termination of tenancy (under § 247.3(a)(3)).

Dated: February 27, 1990.

Jack Kemp,

Secretary.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 13, 47, 61, 91, and 183
Drug Enforcement Assistance; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13, 47, 61, 91, 183

[Docket No. 26148, Notice No. 90-9]

RIN 2120-AD16

Drug Enforcement Assistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The FAA proposes to revise certain requirements concerning registration of aircraft, certification of pilots, and penalties associated with registration and certification violations. This notice also announces new procedures for processing major repair and alteration forms that pertain to fuel system modifications. Actions announced in this notice respond to the Federal Aviation Administration Drug Enforcement Assistance Act of 1988. The proposed requirements and adopted procedures are intended to assist law enforcement agencies in their efforts to stop drug trafficking in general aviation aircraft.

DATES: Comments must be received on or before May 11, 1990.

ADDRESSES: Send or deliver comments on this notice in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, AGC-10, Room 916, 800 Independence Avenue, SW, Washington, DC 20591. Comments must be marked Docket No. 26148. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Earl F. Mahoney, Airmen and Aircraft Registry (AVN-400), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 MacArthur Blvd., Oklahoma City, OK 73125, telephone (405) 680-7357.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26148." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

History

Drug trafficking has become a national crisis. Illegal drugs sold in the United States are often smuggled into this country in general aviation aircraft. Of the total volume of cocaine and marijuana seized in the United States, that seized from general aviation was 69% in 1984, 60% in 1985, 53% in 1986, and 64% in 1987. In 1987, 40,000 pounds of cocaine, $13 billion worth in street value, were confiscated from general aviation aircraft. In 1988, 199,000 pounds of cocaine were seized from general aviation aircraft. This was 50% of all illegal drugs seized in that year. The Office of Technology Assessment of the United States Congress estimates that each year there are 1,300 to 3,500 drug smuggling flights that use general aviation aircraft, about 3.5 to 10 flights per day.

The law enforcement community faces increasingly overwhelming odds in its efforts to stop drug trafficking. Law enforcement personnel, facilities, and equipment have not been equal to the sophistication of drug trafficking operations. Law enforcement agencies have specifically expressed frustration over certain FAA procedures that they believe hinder enforcement efforts. These procedures concern registering aircraft, certificating airmen, and filing major repair forms.

At the time these FAA procedures were established, drug trafficking in general aviation aircraft was not the serious problem that it is today. The procedures were devised in accordance with the Federal Aviation Act of 1958 (FA Act) and its objectives to promote the development and safety of air commerce.

In 1987, the FAA amended certain Federal Aviation Regulations (52 FR 34096; September 9, 1987) to assist the U.S. Customs Service (Customs) in narcotics interdiction. These amendments involved requirements for aircraft marking, aircraft identification data plates, and major repair forms.

In 1988, Congress conducted an extensive investigation into the role and responsibilities of the FAA in carrying out the 1984 Anti-Drug Trafficking Act and its amendments and in providing assistance to law enforcement agencies that enforce the Nation's drug laws. (See House of Representative Report 100-891.)

The Congressional findings resulted in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (Drug Enforcement Assistance Act), which the President signed on November 18, 1988 (Pub. L. 100-690). This act establishes the responsibilities of the FAA in assisting Federal, State, and local agencies involved in the enforcement of the Nation's drug laws. The Drug Enforcement Assistance Act amends the FA Act as follows:

(1) It amends section 103 to declare that it is a policy of the FAA to assist law enforcement agencies in the enforcement of laws that regulate controlled substances, to the extent consistent with aviation safety.

(2) It amends section 501 to authorize and direct the Administrator of the FAA to modify the aircraft registration system to more effectively serve the needs of buyers and sellers of aircraft, drug enforcement officials, and other users of the system.

(3) It amends section 602 to authorize and direct the Administrator of the FAA to modify the pilot certification system to more effectively serve the needs of pilots and drug enforcement officials.

(4) It amends section 605 to authorize and direct the Administrator of the FAA to modify the system for processing major repair and alterations of fuel tanks and fuel systems on aircraft, to more effectively serve users of the system, including drug enforcement officials.

(5) It amends section 313 to authorize the Administrator of the FAA to

establish and collect the fees necessary to cover the costs of issuing aircraft registration certificates, issuing airman certificates to pilots, and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

(6) It amends section 901 to authorize the Administrator of the FAA to pursue civil actions and assess civil penalties for violations of the regulations on aircraft registration and recordation of aircraft title documents.

(7) It amends section 902 to create criminal penalties for forgery of airman certificates, false marking of aircraft, and other aircraft registration violations and to make it unlawful for any person to knowingly and willingly operate an aircraft in violation of any requirement issued by the Administrator with respect to the display of navigation or anticollision lights.

The Drug Enforcement Assistance Act also requires the Administrator of the FAA to issue final regulations carrying out the objectives of the amendments on aircraft registration, airman certification for pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems on aircraft. Due to the complexity of the subject matter and the lead time required for such comprehensive rulemaking, the 10-month deadline has not been met. The FAA has not been able to issue final rules within the timeframe of the Congressional mandate. However, the FAA has accomplished certain non-rulemaking actions and has conducted briefings of industry groups, law enforcement agencies, and appropriate FAA divisions to inform these groups of possible FAA actions and to solicit information on specific needs and concerns of these groups.

Amendments to FAA regulations proposed in this document, as well as non-rulemaking changes in procedures, are intended to correct deficiencies identified in the Drug Enforcement Assistance Act. A discussion of non-rulemaking actions and proposed rulemaking requirements follows. The effective date of these proposed rules would be contingent on necessary appropriations and the time needed to update Airmen and Aircraft Registry equipment to handle the new requirements.

General Discussion of FAA Actions

Aircraft Registration.

Section 501(a) of the FA Act states in part, "It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner * * *" In the same section, the FA Act states that the Administrator "may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership" as prescribed.

The current regulations for aircraft registration require that an aircraft seller fill in the reverse side of the aircraft registration certificate with the name and address of the buyer and mail it to the Aircraft Registry in Oklahoma City. The buyer is to fill out and submit in person or by mail an application for aircraft registration along with evidence of ownership such as a bill of sale from the seller. Once the Aircraft Registry checks the application and supporting documents for legibility and compliance with part 47, it issues an aircraft registration certificate to the new owner. Issuance of an aircraft registration certificate typically takes 30 to 40 days if there are no complications. During this period (or for up to 90 days), the applicant may operate the aircraft by retaining a duplicate copy of the application The applicant submits the other copies of the application and evidence of ownership to the Aircraft Registry. The retained copy, known as the pink copy, must be carried in the aircraft as evidence of temporary authority to operate the aircraft without a certificate of registration. The temporary authority is limited to operations within the United States. The final rule amending § 91.27(a)(2) to reflect this limitation (effective September 18, 1989) was published on August 18, 1989 (54 FR 34284). The amended provision will be renumbered; effective August 18, 1990, the requirement will be stated in § 91.203(a)(2). (The FAA also issued a notice of legal opinion on this subject on December 14, 1988 (53 FR 50208).)

The current requirements, including the operation of the aircraft by authority of the pink copy, were established to provide a smooth transfer of ownership that would not unduly restrict operation of the aircraft during processing of an application for registration. However, these procedures have permitted drug traffickers to obtain a certificate of registration on the basis of false information or to appear to have temporary authority to operate even though they have not applied for registration. The above-referenced legal opinion and the amendment to § 91.27(a)(2) provide an immediate remedy for many pink-copy abuses, thereby contributing significantly to the illegal drug interdiction effort.

The Drug Enforcement Assistance Act requires that in modifying the aircraft registration system, the Administrator of the FAA address certain deficiencies in and abuses of the existing registration system. Among the deficiencies and abuses listed in the Act, those related specifically to registration are the following:

(1) The registration of aircraft to fictitious persons.

(2) The use of false or nonexistent addresses by persons registering aircraft.

(3) The use by a person registering an aircraft of a post office box or "mail drop" as a return address for the purpose of evading identification of such person's address

(4) The registration of aircraft to corporations and other entities established to facilitate unlawful activities.

(5) The submission of names of individuals that are not identifiable on applications for registration of aircraft.

(6) The lack of a system to assure timely and adequate notice of the transfer of ownership of aircraft; and

(7) The practice of allowing temporary operation and navigation of aircraft without issuance of a certificate of registration.

The FAA addresses each of these deficiencies by proposing to amend the regulations for aircraft registration that appear in 14 CFR part 47 and by changing the procedures for registering aircraft.

To address deficiencies and abuses concerning false information on applications, the FAA first considered requiring each applicant to submit a registration application in person to an FAA official or to a designated representative (such as a pilot examiner). The applicant would have been required to show positive identification that includes a recent photograph, name, street address, and identification number such as a driver's license number or tax identification number. The FAA official or designated representative would have verified the identification and completeness of the application, provided the applicant with a stamped temporary authority to operate, and mailed the application and supporting documents to the Aircraft Registry.

Because requiring an applicant to appear in person to an FAA official or designated examiner may create a burden to some applicants, the FAA also considered allowing an applicant to mail in a self-certified true copy of an applicant's photo ID. The true copy would be submitted along with the application and other documents. No face-to-face contact would be required. While this alternative would be more

convenient for applicants, it would be less effective in combatting false information by registrants.

Both of the above alternatives were rejected in favor of a compromise that would sufficiently tighten application procedures and requirements without creating an unnecessary burden on applicants. Under proposed § 47.31, an applicant would fill out and sign an application for aircraft registration (AC Form 8050–1). The current application form would be revised to require, in part, a driver's license identification number for an individual who has a driver's license or a tax identification number for other than an individual (such as a business). If an applicant uses a post office box or mail drop as the mailing address, the applicant must also provide a residential or business address.

The application would also contain a Certificate of True Copy/Identification Form (true copy/identification form) for certifying true copy of identification documents. The required identification documents for all applicants would be a photo ID of the applicant such as a driver's license, airman certificate, or passport. For a corporation, association, or partnership, the required identification would include, in addition to the photo ID of the signer of the application, a Certificate of Incorporation or other document showing that an applicant is a legal entity. An applicant (either individual or signer for a business) would appear before a notary public, another person authorized by law to administer oaths, or at an FAA office (as listed in proposed § 47.32(b)(2)) and present the required original identification document(s), a copy of the original identification document(s), and the true copy/identification form.

The notary or other official would verify that (1) the photograph on the original photo ID document is a likeness of the person who has presented the documents and (2) the copy of an original document is a true and complete copy of the original. Accordingly, the notary or other official would complete the true copy/identification form.

If the applicant has appeared before a notary or other person authorized by law to administer oaths, the applicant would mail or deliver all appropriate application documents to the Aircraft Registry. If the applicant has appeared at an FAA office, the FAA official would submit all application documents to the Aircraft Registry in a stamped envelope provided by the applicant.

Under proposed § 47.32, to obtain temporary authority to operate the aircraft until the Aircraft Registry issues the aircraft registration certificate, an applicant checks a block on the Aircraft Registration Application requesting temporary authority to operate and may do one of the following:

(1) An applicant may submit a self-addressed stamped envelope or prepaid overnight envelope along with the documentation for registration. The Aircraft Registry would briefly review the application and documents, and if documentation appears complete, would issue a temporary authority form to operate the aircraft for 45 days. This brief review would not mean that the FAA has determined eligibility for registration, but only that the documents comply with application procedures.

(2) An applicant who submits the documents in person for verification to an FAA office (as listed in proposed § 47.32(b)(2)) may be issued immediately a temporary authority form to operate the aircraft for 45 days.

Temporary authority to operate would not be provided for aircraft not previously registered in the United States or to aircraft last registered in a foreign country because such aircraft will not have been determined to be airworthy. An airworthiness certificate is not issued until an original certificate of registration has been issued. Thus, in the interest of aviation safety, the owners of such aircraft would not be provided temporary authority to operate pending issuance of a certificate of registration.

Where temporary authority is permitted, it would be issued on a controlled form printed on certificate-quality paper with a special control number. These temporary authority forms would be available only from the appropriate FAA offices. This change in procedures would eliminate the type of abuse that has occurred with pink copy procedures.

If issuance of the Certificate of Aircraft Registration takes longer than 45 days (for example, in instances when the application is returned for correction or additional documentation is required) the Aircraft Registry would issue a Letter of Extension that would serve as authority to continue to operate the aircraft without registration. The letter would have to be carried in the aircraft with the temporary authority form. If for some reason the applicant does not receive the Certificate of Aircraft Registration nor a Letter of Extension before the temporary authority expires, the applicant would have to request and be issued a Letter of Extension in order to continue to operate the aircraft. It would be the responsibility of the applicant to have valid and current temporary authority in order to operate the aircraft until he or she receives the Certificate of Aircraft Registration.

A temporary authority form would provide temporary authority to operate the aircraft only within the United States. Any applicant who wishes to fly the aircraft outside the United States without waiting the usual processing time for a registration certificate to be issued would have to request that the Aircraft Registry review the application on a priority basis. The Registry would expedite a complete review of the application and supporting documents and, if the documentation is satisfactory, would register the aircraft and issue a temporary certificate of registration for use by the applicant outside the United States. The temporary certificate of registration should not be confused with temporary authority to operate without registration. The temporary certificate of registration is a certificate in all respects, whereas temporary authority is merely permission to operate in the United States pending review of the aircraft registration application and supporting documents by the FAA Aircraft Registry. The temporary certificate of registration is usually transmitted by wire and has an expiration date to ensure that the certificate holder, upon receipt, properly places the original certificate inside the aircraft.

The FAA is proposing use of notaries to certify the identification copy because notaries are more accessible to or by applicants than FAA officials or designated representatives. However, the FAA does invite comment on this issue, since Registry experience has shown that incomplete notary certifications and the execution of notary certification by those with expired commissions increase the rate of rejection of submitted documents. The FAA also requests comments on proof of identification for businesses. Since not all businesses have a certificate of incorporation, the FAA would consider other documentation of proof but would like to standardize to the extent possible the kinds of proof that would be acceptable.

At an FAA briefing of industry on March 6, 1989, on the Drug Enforcement Assistance Act and the FAA's proposed implementation of the Act, an industry spokesperson raised an objection to eliminating the "fly away" authority now provided by current pink copy procedures. According to the objection, an individual may buy a plane at a location remote from an FAA office or during a time when FAA offices are not open. At present, such an individual could mail in the registration application

and fly the airplane home immediately on the temporary authority of the pink copy. Under the proposed rules such transactions would be impossible unless the FAA provides special provisions for 24- or 48-hour operation of the aircraft until the new owner obtains a temporary authority form. While the FAA considered procedures for allowing short-term temporary operation without a form, all such procedures seem susceptible to abuse. The Congressional Committee report specifically cites as a deficiency the "practice of allowing temporary operation and navigation of aircraft without issuance of a certificate of registration * * *" Even a 24- or 48-hour authority without FAA control would be sufficient to conduct drug hauls. The FAA also believes that aircraft purchases that require immediate operation of the aircraft during non-business hours or in remote locations are not common occurrences since usually a buyer wants an aircraft title search done before a purchase. Title searches can only be accomplished during business hours at the Aircraft Registry. The FAA invites comment on this issue, specifically on how frequently sales occur over a weekend when the FAA facilities are closed, and suggestions for "fly away" procedures that would not be susceptible to abuse by drug traffickers.

Other changes proposed for registration application requirements are as follows:

Proposed § 47.13 adds a requirement that the name of each signer on an Aircraft Registration Application be typed or legibly printed. This requirement would assure that signers' names can be clearly determined from the application record

Current § 47.17, which lists fees for registration, would be revised to show new fees. New fees are discussed in the fee section of this preamble.

Proposed § 47.19 would add the provision that applications may be delivered to an FAA office under the provisions of § 47.32. Current address requirements for mailing or delivery of applications to the Aircraft Registry would be updated.

Proposed § 47.63 on Dealer's Certificates would require that an applicant for a Dealer's Certificate comply with § 47.31 (a)(3), (a)(4), and (b). This would require that an applicant appear before a notary or at an FAA office with the required identification documents.

Sample registration and certification forms are presented in Figures 1–3 of this document.

BILLING CODE 4910–13–M

Figure 1

UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION-MIKE MONRONEY AERONAUTICAL CENTER

AIRCRAFT REGISTRATION APPLICATION

(1)
UNITED STATES REGISTRATION NUMBER N _____
AIRCRAFT MANUFACTURER AND MODEL _____

AIRCRAFT SERIAL NUMBER _____

CERT. ISSUE DATE _____ EXPIRATION DATE _____

THIS BLOCK FOR FAA USE ONLY

(2) TYPE OF REGISTRATION (check one box)
____Individual ____Co-owner
____Partnership ____Government
____Corporation or Association ____Non-Citizen Corporation

(3) PURPOSE OF APPLICATION (check one box)
____Initial Registration ____Renewal of registration
____Request for replacement certificate. I hereby certify that my certificate has been ____lost, ____stolen, or ____mutilated. (Check one)
____Reporting change of address. I hereby certify this is an actual address and the address is not being changed to confuse the true location of the certificate holder.

(4) AIRCRAFT USE CERTIFICATION (Check box and show certificate number if applicable)
_____I/we certify the aircraft is used to provide air transportation as defined in 49 U.S.C. 1301(10). The FAA assigned air carrier or air taxi certificate number is _____.

(5) NAME OF APPLICANT (Person(s) shown on evidence of ownership. If individual, give last name, first name, and middle initial.) (NAME MUST BE TYPED OR PRINTED.)

ADDRESS (Permanent mailing address for first applicant listed.) TELEPHONE NUMBER: (_____)_____

Number and street: _____ Apartment, Suite, or mail drop number

P. O. Box _____ Rural Route: _____ Box: _____

City: _____ State: _____ Zip Code: _____

(6) LOCATION OF APPLICANT'S RESIDENCE OR BUSINESS. Complete this section if a post office box or mail drop is used as the mailing address. This does not apply to rural routes.

_____
(Street and number, building name, airport, highway intersections, county roads, or other description.)

_____
(City, State, Zip)

(7) ATTENTION: READ THE FOLLOWING STATEMENT BEFORE SIGNING THIS APPLICATION. THIS PORTION MUST BE COMPLETED. A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec.1001 and 49 U.S. Code 1472(b)(1).

CERTIFICATION

I/WE CERTIFY:

(1) That the above aircraft is owned by the undersigned applicant, who is a citizen (including corporations) of the United States, or

CHECK ONE AS APPROPRIATE:
a. ____A resident alien, with alien registration (Form I-151 or Form I-551) number _____;

b. ____A non-citizen corporation organized and doing business under the laws of (State)_____, and said aircraft is based and primarily used in the United States. Records for flight hours are available for inspection at _____; and
(Street address or location, city and state)

(2) That the aircraft is not registered under the laws of any foreign country.

(8) THIS APPLICATION MUST BE SIGNED IN INK BY THE APPLICANT in accordance with Part 47 of the Federal Aviation Regulations.

Check here if the following certification is applicable. ____I hereby certify that as applicant, I do not possess either a driver's license nor a Taxpayer Identification Number.

SIGNATURE (If executed for a co-ownership, all applicants must sign. Use the reverse side of application if necessary.) TITLE EACH INDIVIDUAL SIGNING MUST SHOW DRIVER'S LICENSE NUMBER AND STATE OF ISSUE. IN ADDITION CORPORATIONS, ASSOCIATIONS, OR PARTNERSHIPS MUST SHOW FEDERAL TAX IDENTIFICATION NUMBER (TIN). DATE

TYPE OR PRINT NAME BELOW EACH SIGNATURE

Signature _____ TIN _____ AND
Typed or Printed Name LICENSE NUMBER _____
ISSUING STATE _____

Signature _____ TIN _____ AND
Typed or Printed Name LICENSE NUMBER _____
ISSUING STATE _____

Signature _____ TIN _____ AND
Typed or Printed Name LICENSE NUMBER _____
ISSUING STATE _____

AC Form 8050-1 (0052-00-628-9005)

Figure 2

ATTENTION: THIS MUST BE COMPLETED AT AN FAA OFFICE, OR BY A NOTARY PUBLIC OR OTHER PERSON AUTHORIZED BY LAW TO ADMINISTER OATH.

(Complete either certification, as appropriate)

CERTIFICATION AS TO TRUE COPY/IDENTIFICATION

For an individual:

In the State of_____.

County of_____.

I hereby certify that I have examined an original document, a copy of which is attached hereto bearing my certification as to true copy. The photograph appearing on the original document is a likeness of the person who has appeared before me and has identified (himself)(herself) to me as (Mr.)(Mrs.)(Miss)(Ms.) _____ _____.

Date:_____

Name (Type or print)_____

Signature_____

Address_____City_____State_____.

(Complete below if appropriate)

My commission expires:_____Seal:

==========

CERTIFICATION AS TO TRUE COPY/IDENTIFICATION

For a Corporation, Association, or Partnership:

In the State of_____

County of_____

(1) I hereby certify that I have examined either an original document, or a copy certified by the issuing authority, a copy of which is attached hereto bearing my certification as to true copy, and

(2) I hereby certify that I have examined an original document, a copy of which is attached hereto bearing my certification as to true copy. The photograph appearing on the original document is a likeness of the person who has appeared before me and has identified (himself)(herself) to me as (Mr.)(Mrs.)(Miss)(Ms.) _____ _____.

Date:_____

Name (Type or print)_____

Signature_____

Address_____City_____State_____.

(Complete below if appropriate)

My commission expires:_____Seal:

AC Form 8050-1 (0052-00-628-9005)

Figure 3

NUMBER

T_____

TEMPORARY AUTHORITY TO OPERATE AIRCRAFT WITHOUT REGISTRATION
(Operation within the United States only)

Registration Number_____ (check one)

Aircraft Manufacturer and Model ___Initial registration by this applicant.

_____ ___Reregistration by this applicant.

Serial Number_____

Type of Registration (check one)

___Individual ___Partnership ___Corporation or Association ___Co-owner

___Government ___Non-Citizen Corporation

Name of Applicant(s)

ADDRESS (Permanent mailing address for first applicant listed.)

Number and street:_____

P. O. Box_____Rural Route:_____Box:_____

City:_____State:_____Zip Code:_____

Telephone Number: (_____)_____

FAA IDENTIFICATION

_____
(date)

_____ _____
(signature)(FAA Official) (FAA Office)

AUTHORITY TO OPERATE

Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 45 days from the above date, during which time this form must be carried in the aircraft.

AC Form 8050-**

BILLING CODE 4910-13-C

Aircraft Reregistration and Periodic Registration

Currently, an aircraft registration certificate does not expire. Occurrences that result in a registration becoming ineffective are listed in current § 47.41(a). Occurrences that result in an invalid registration are listed in § 47.43. Upon termination of registration by operation of law as specified in § 47.41(a), or by agency determination as specified in § 47.43(a), the certificate of registration with the reverse side completed is to be returned to the Aircraft Registry. The Registry in turn updates the aircraft records to indicate the registration status.

In some instances, the Aircraft Registry is not notified of an aircraft sale or of a registration otherwise becoming ineffective and hence the aircraft registration records do not show the current registration status of such aircraft

In an effort to maintain current information, present § 47.51 requires an owner of a registered aircraft that has had no activity for the past 36 months to complete and submit to the Aircraft Registry a triennial aircraft registration report. If there has been a change in registered owner information, such as a change in current name, address, aircraft identification, or citizenship status, the returned form is to reflect that change The form is also used to report the sale, destruction, or other disposition of aircraft.

The Drug Enforcement Assistance Act listed two deficiencies in current requirements and procedures regarding aircraft status and currency of information:

(1) The large number of aircraft that are classified as being in "sale-reported status"; and

(2) The lack of a system to assure timely and adequate notice of transfer of ownership.

The Committee report states that about 17,000 aircraft (out of about 300,000) are in "sale-reported" status, which means the FAA has received some indication of a sale but the aircraft has not been registered to the new owner. Under such circumstances, law enforcement agencies are unable to locate the current owner.

Timely and adequate notice of transfer of ownership is the responsibility of the parties involved. The seller is responsible for returning the certificate of registration to the FAA with the reverse side completed. The new owner is responsible for submitting an application and evidence of ownership in compliance with part 47, if the owner intends to operate the aircraft. The Registry does not hold up registration if the seller has failed to submit the old certificate, but the Registry cannot register an aircraft without the submission of the appropriate documents by the new owner.

Primary reasons that registration is sometimes delayed are:

(1) Documents of transfer are submitted but are not in compliance with parts 47 and 49.

(2) The Registry is not notified of a transfer.

(3) The aircraft is purposely not registered by the new owner because the new owner does not intend to operate it (for example, the owner intends to do considerable work on the aircraft before registering it and flying it, or because the owner has purchased the aircraft with the intention of reselling it without ever operating it). In such cases the Registry may not be notified. It is not unusual for a chain of documents to be submitted when an aircraft is registered showing several ownership transfers between the last registered owner and the present applicant.

In order to address the deficiencies identified by Congress, the FAA considered: (1) requiring registration of all aircraft regardless of whether an aircraft is to be operated; (2) periodic renewal of aircraft registration; (3) increased follow-up actions on "sale-reported" aircraft; and (4) clarification of the requirements for notifying the Aircraft Registry of sales.

The FAA has rejected the first option of requiring registration of all aircraft regardless of whether or not an aircraft is to be operated. Such a requirement would need additional legislation, be difficult to enforce, and would not significantly help enforcement agencies. The FAA considers that, in combination, the other three options will increase the accuracy and completeness of information on aircraft registration.

Accordingly, the FAA is proposing (§ 47.46(a)) a 3-year expiration for any certificate of aircraft registration issued after the effective date of the rule. Before the expiration date on a certificate, the Aircraft Registry would notify the owner of an impending expiration. The registrant would mail in an application, a renewal fee, and a notarized copy of recent identification of the owner.

Although law enforcement representatives who testified in Congressional Committee hearings suggested annual aircraft registration, the FAA is proposing a 3-year renewal, based on its experience with the triennial validation program. Given the number of aircraft and the rate of ownership transfers and other registration changes, a 3-year renewal seems appropriate for maintaining current information. Since renewal of aircraft registration will require that an applicant appear before a notary or FAA official, the 3-year renewal would impose less of a burden on applicants than an annual renewal requirement.

Under proposed § 47.46(b), any aircraft registered before the effective date of the rule would have to be reregistered. Such aircraft would be reregistered over a 3-year period. The FAA is allowing a 3-year phase-in of reregistrations to provide an orderly and manageable transition to the new registration form and procedures. Specific dates for reregistration have not been established; the FAA does not know at this time when the proposed rule could take effect, since the issuance of the new aircraft registration certificates will require increased and improved automation at the Aircraft Registry. A 3-year phase-in schedule would be established and issued as part of the final rule. In accordance with the schedule a holder of a certificate of registration would apply for reregistration during specific dates between the effective date and 36 months after the effective date, depending on the month of issuance. For example, a holder of a certificate issued in January of any year might be required to apply for reregistration between April 1 and June 30 of the year the rule takes effect; for a certificate issued in February application might be made between July 1 and September 30, etc. The applicant would submit a reregistration application and would comply with proposed § 47.31, except for paragraph (a)(2) of that section, which requires submission of evidence of ownership.

The term "reregistration" is used in this document to refer to the procedures for issuing new registration certificates to aircraft that were registered before the effective date of the rule. The term "renewal," when referring to aircraft registration, is used to refer to periodic (3-year) registration required for any aircraft that has a certificate of registration with an expiration date (i.e., a certificate issued after the effective date of the rule).

In accordance with proposed § 47.46(c), an applicant for renewal would be required to apply 45 days in advance of the expiration date on the certificate to allow receipt of a new certificate before expiration of the old certificate. As a convenience, the Aircraft Registry would issue reminder notices and appropriate forms to

certificate holders 60 days in advance of expiration dates. However, the applicant would be responsible for obtaining a valid certificate before the expiration date of an old certificate. A certificate of aircraft registration would be ineffective as of the date following the expiration date on the certificate. Failure to apply in time would result in the aircraft being grounded until a new certificate is issued or the owner requests temporary authority to operate until the new certificate is issued.

Certain conveyances affecting title of an aircraft (i.e., bill of sale, lien document, or other instrument affecting title) are eligible for recordation under part 49 only if the aircraft is registered. If a registrant misses either the reregistration date or a renewal date, the registration certificate would no longer be effective. After the expiration date, no new conveyances on the aircraft would be eligible for recordation until a new certificate of registration had been issued.

All certificates issued after the effective date of this rule would be issued on non-forgeable and machine-readable paper. This would assure that information on a certificate could not be altered, that a certificate could not be forged, and that machine-readable information (such as the owner's name, aircraft registration number, aircraft serial number, make and model of aircraft) could be used by Customs to ascertain how many flights an aircraft has made in and out of the United States.

Requiring renewal of registration would ensure more current information in the Registry's data base and would result in termination of registration for any aircraft that has an expired registration certificate. If law enforcement agencies discover that an aircraft is being operated without a current registration certificate, under the law, they may seize the aircraft, and the owner and operator of the aircraft are subject to penalties.

In accordance with the proposed reregistration and renewal requirements, current § 47.51, on the triennial aircraft registration report, would be deleted.

Proposed § 47.39 revises current requirements to clarify that an aircraft is registered on the date that the Aircraft Registry determines that the requirements of Part 47 have been complied with. The effective date of registration is shown as the date of issuance on the certificate. This revision codifies the existing practice and clarifies that registration is not effective as of the date an application and supporting documentation are received at the Aircraft Registry.

In addition, § 47.41(a) would be revised to specify that a certificate of registration is effective until its expiration date or until the final date for registration for current certificates, which do not have an expiration date. Proposed § 47.41(b) would require a registrant to submit the certificate of registration for an aircraft with the reverse side endorsed to the Aircraft Registry within 10 days after the sale of that aircraft or other event as specified in proposed § 47.41. In the event of the death of the holder of the certificate, the administrator of the estate or other party as specified in the proposed rule must submit the certificate within 60 days. The intent of this proposed requirement is to emphasize and clarify that the certificate should be submitted to the Aircraft Registry directly after a sale or other event. Not only is the return of a certificate important for maintaining current records, but it is in the registrant's interest to relinquish responsibility for the aircraft's operation after a sale or other event resulting in termination of registration. Failure to submit a certificate properly endorsed after transfer or other event resulting in termination of registration could result in civil penalties.

Proposed § 47.45 would require that an applicant applying for issuance of a certificate because of change of address must comply with proposed § 47.31(b) identification procedures.

The proposed rule would revise current § 47.49 on replacement certificates by requiring that requests for replacement of lost or mutilated certificates be submitted in writing and that the requests be accompanied by the documents required in proposed § 47.31(b), plus the required fee. An Aircraft Registration Application may be used to request a replacement certificate. Procedures for obtaining a temporary certificate of registration pending receipt of a replacement certificate would not change from current procedures.

Sale-Reported Status

In addition to proposing the above requirements, the FAA is taking non-rulemaking actions for those aircraft in a "sale-reported" status. A "sale-reported" status in the automated aircraft records indicates to an FAA conveyance examiner that the Registry has received some evidence that a sale has occurred.

Approximately 1050 aircraft records are placed in a sale-reported status each month as a result of correspondence, bills of sale, and returned certificates of registration from sellers. Approximately 80% of all sale-reported records are processed and the aircraft registered to new owners. The remaining 20% (2,520 a year) either do not comply with the regulations or do not receive the Registry's request for registration information because of incorrect mailing addresses. These aircraft are not registered aircraft.

Many records had been in sale-reported status for a number of years as a result of the Registry's annual revalidation program. This was a mailing to every aircraft owner requiring an owner to report changes of address, changes of ownership, deaths, etc. If the report was not returned to the Registry, an aircraft certificate was revoked. During this program, many aircraft were reported sold but the reported new owners did not respond to letters from the Registry requesting that they register. When the revalidation program was discontinued in 1977, many aircraft records were in a sale-reported, administratively suspended, or a certificate-revoked status, and have remained so. These aircraft are not registered aircraft.

In 1980, a triennial program was implemented. As mentioned earlier, this is a 3-year revalidation program that seldom results in revocation of registration. A percentage of the annual mailouts (6,272 reports are mailed monthly to manage the workflow) are returned reporting that an aircraft has been sold. In FY-88, the mailout totaled 75,264 with 7% (an average of 440 per month) returned indicating that aircraft had been sold. These aircraft are given a sale-reported status.

Approximately 10 percent of the forms mailed by the Registry are completed and returned with updated information. Approximately 5 percent are undelivered because of incorrect addresses.

To clean up the large number of records that are in a sale-reported status, examiners at the Aircraft Registry will review sale-reported records and cancel registration for those that have had no activity for three years or longer. This effort is expected to eliminate 70 to 80% of the sale-reported records. The remaining 20 to 30% of the sale-reported records will be phased out by mailouts, telephone calls, and review of pending files.

Assignment of Aircraft Identification Numbers

In accordance with the Convention on International Civil Aviation, called the Chicago Convention of 1944, "Every aircraft engaged in international air

navigation shall bear its appropriate nationality and registration marks." The United States complies with this requirement by issuing U.S. registration numbers (commonly called "N-numbers") to all registered aircraft, whether the aircraft are used for international or domestic flights. U.S. registration numbers must be painted on aircraft in compliance with 14 CFR Part 45. The procedures for requesting and obtaining numbers are covered in 14 CFR Part 47.

Current § 47.15 states that an applicant for registration must place a "U.S. identification number (registration mark)" on the application and on all supporting documents. All newly manufactured aircraft are assigned registration numbers; all aircraft previously registered in a foreign country that are being brought into the U.S. register are assigned registration numbers. If a U.S.-registered aircraft is sold within the United States, the aircraft retains its registration number unless the new owner requests a new number or the seller requests keeping the number for use on another aircraft.

In accordance with § 47.15(f), special registration numbers are assigned by the Aircraft Registry upon request and submission of a $10.00 fee. A special registration number can be reserved for use at a later time. A number can be reserved indefinitely by paying $10.00 annually. Current regulations and procedures allow frequent changes in registration numbers. It is common for a registration number to be changed when there is a change in ownership of an aircraft.

The Drug Enforcement Assistance Act identifies the following deficiencies in the assignment of registration numbers for aircraft:

(1) The ability to make frequent changes in the registration markings assigned to the aircraft.

(2) The use of false registration markings on aircraft.

(3) The illegal use of 'reserved' registration markings on aircraft.

To address these problems the FAA considered eliminating special registration numbers altogether. Newly manufactured and imported aircraft would be assigned registration numbers that would remain with the aircraft for the life of the aircraft or until the aircraft was exported. However, the FAA is reluctant to eliminate special numbers because experience has shown that the aviation community considers this a desirable service

The FAA also considered allowing a number change only at the time ownership of the aircraft is transferred. However, at the FAA briefing of the aviation community, a person requested that the FAA allow a change in registration number when a special number becomes available. According to the request, at the time of ownership transfer, a desired number may not be available but may become available later, and the owner should be allowed to request that special number at that time.

The FAA is therefore proposing in § 47.15(d) that a request for a special number be allowed once during ownership of an aircraft. The request may occur at the time of transfer or at any other time that a desired number becomes available. A request for a registration number change must be in writing and must be accompanied by the fee for a special registration number. If a seller wants to retain the registration number that is currently assigned to the aircraft, a written request to reserve the number must accompany the buyer's Aircraft Registration Application. The written request to reserve the number must be signed by both the seller and the buyer. If the seller retains a number and the buyer requests a new special registration number at the same time, a separate fee must be submitted for each. If the buyer accepts a number assigned by the Registry, no N-number fee would be charged to the buyer. Current regulations and procedures for assignment of numbers to newly manufactured aircraft and to imported aircraft would not change.

Current § 47.15(f) would be revised to specify the time within which a certificate holder must affix a special registration number after the Registry has assigned it to the aircraft. Currently, a certificate holder must notify the Registry within 5 days after affixing the special registration number to the aircraft. In addition to the 5-day requirement, the proposed revision would allow the certificate holder 90 days to paint the special registration number on the aircraft and return the appropriate form to the Aircraft Registry. If the Registry does not receive the notification form within 90 days, the number may not be used without the applicant again requesting and receiving approval for using it. If a number is painted on the aircraft but the notification form is not returned to the Aircraft Registry, the special number assignment and the certificate of aircraft registration would become invalid.

Proposed § 47.15(i) would be added to the requirements to clarify that a registration number is effective only as long as the registration is effective. The registration number also ceases to be effective if an aircraft is sold and not registered within 3 years, if a registration certificate expires, or if a certificate holder has not reregistered the aircraft or renewed registration in accordance with the proposed reregistration and renewal requirements. Under such circumstances an applicant would have to apply for a new registration number. While in most instances the old number may still be available, the Registry would not be responsible for retaining the number for use on that aircraft.

In addition, the FAA proposes to change its procedure for reserving special numbers that have not been assigned to an aircraft. The Registry has encountered instances when a request for information on the availability of a certain number is made by phone. Later the available number is painted on an aircraft. The owner either has misunderstood the procedure for assigning a registration number or has intentionally used an available number illegally. To prevent misuse of reserved registration numbers, no information on availability of registration numbers will be given over the telephone.

No fees would be charged for assignment of a registration number selected by the Registry. Fees would continue to be charged for reserving special numbers and assigning special numbers; however, such fees would not increase.

Section 91.203 (revised September 18, 1989; 54 FR 34284; formerly § 91.27) would be amended by deleting the reference to the "second pink copy of the Aircraft Registration Application" and replacing it with a reference to the "temporary authority to operate," which would be provided in proposed § 47.32(b).

Pilot Certification

Section 602 of the FA Act authorizes the Administrator of the FAA "to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft." In accordance with the FA Act any person may file an application for an airman certificate. If the Administrator finds that the person possesses the qualifications and capabilities to perform the duties of the airman certificate sought, the Administrator shall issue the certificate "containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters" as the Administrator determines are necessary to ensure safety in air commerce.

In accordance with the FA Act each airman certificate "shall be numbered

and recorded" by the Administrator, and "shall state the name and address of, and contain a description of, the person to whom the certificate is issued; and shall be entitled with the designation of the class covered thereby."

Regulations pertaining to the requirements for obtaining pilot and flight instructor certificates appear in 14 CFR part 61. The current regulations and procedures for obtaining a pilot's certificate usually require that an applicant pass a written examination and a flight or practical examination. A pilot's certificate is issued by the Airmen Certification Branch, part of the Airmen and Aircraft Registry in Oklahoma City. The applicant submits an application for a certificate and supporting documents to a designated pilot examiner, who in turn submits the application to an FAA Flight Standards District Office for review; alternatively, the applicant may appear before an FAA inspector in the District Office. The District Office forwards the documents to the Airmen Certification Branch, where the documents are reviewed for compliance with the regulations. If the documents are accepted, a certificate is issued and mailed to the airman.

The Drug Enforcement Assistance Act amends section 602 of the FA Act to authorize and direct the Administrator to modify the system for issuing airman certificates to pilots "to make the system more effective in serving the needs of pilots and officials responsible for enforcement of laws relating to the regulation of controlled substances." The modifications must address the following identified deficiencies:

(1) The use of fictitious names and addresses by applicants for such certificates.

(2) The use of stolen or fraudulent identification in applying for such certificates.

(3) The use by a person applying for such a certificate of a post office box or "mail drop" as a return address for the purpose of evading identification of such person's address.

(4) The use of counterfeit and stolen airman certificates by pilots.

(5) The absence of information concerning physical characteristics of holders of such certificates.

The current regulations on pilot certification primarily concern qualifications. Administrative procedures for issuance of a certificate are covered in the regulations by the statement "on a form and in a manner prescribed by the Administrator" (§ 61.13(a)). Internal guidance governing issuance of pilot certificates is contained in FAA Order 8710.4, Certification: Pilots and Flight Instructors and in FAA Order 8430.6C, Air Carrier Operations Inspector's Handbook. However, these orders do not provide specific guidance with respect to procedures for identification of applicants. Accordingly, the FAA issued Action Notice No. 8700.2 (a temporary internal order), which became effective on November 1, 1989, that requires all designated examiners and FAA inspectors to require an applicant for any airman certificate to present positive identification at the time of application. This identification must include a photograph of the applicant, the applicant's signature, and the applicant's actual residential address.

Acceptable types of identification will include, but not be limited to, driver's licenses, government ID cards, passports, and other forms of ID that meet the personal identification requirements.

The inspector or examiner may disapprove an application if the applicant fails to provide proper identification or if the inspector or examiner believes the identification is fraudulent. Inspectors and examiners will be alerted to watch for any indication of fraudulent or altered forms of identification, or any other irregularity which may indicate that an applicant has falsely represented his or her identity. Any such indications are to be reported immediately to the nearest Civil Aviation Security Field Office or Regional Civil Aviation Security Division.

The new procedures implemented by Action Notice No. 8700.2 are intended to eliminate the use of fictitious names and addresses, stolen or fraudulent identifications, and use of post office box or "mail drop" addresses only. These new procedures are needed to reduce the possibility that pilot certificates will be erroneously issued as a result of fraudulent activity by applicants or by those claiming to be an applicant. In addition, the new procedures are required to ensure that applicants meet eligibility requirements specified in the Federal Aviation Regulations, such as age requirements. These procedures apply to all airmen, rather than only to pilots, since the problem of fraudulent identification occurs for all categories of airmen. The procedures are a minimal burden since they require only that an applicant for an airman certificate present personal identification to an examiner or inspector when applying.

In addition, rule revisions are proposed in this notice to correct remaining deficiencies in the airman certification system for pilots. These proposed revisions reflect proposed modifications in application procedures and certificate forms. Under the proposed system, all pilot certificates would consist of two parts: Part A, the Airman Identity Card, would contain basic identifying information (name, address, identification number, etc.) and a photograph of the applicant. It would be credit card size, machine readable, and non-forgeable. It would have an expiration date requiring renewal every 3 years. Part B, the rating and limitation portion of the certificate, would be basically the certificate that is now issued. It would list the pilot certificate number, ratings, and limitations. It would not have to be renewed on a periodic basis, but would be reissued as it is now, when new ratings are acquired. It would be issued on non-forgeable paper similar to Part A.

In accordance with proposed § 61.3(a), both parts of the pilot certificate would have to be carried by a pilot when he or she is exercising the privileges of the certificate. Certificate privileges could not be exercised without possession of both parts of the certificate or after the expiration date on the airman identity portion of the certificate.

After the effective date of the rule, in addition to procedures that would require an applicant for a pilot certificate to show personal identification to the flight instructor or FAA inspector, an applicant would have to submit a recent passport-type photograph of the applicant that will be reproduced on the airman identity card portion of the certificate.

Under proposed § 61.19(c), the airman identity card portion of a pilot certificate would expire at the end of the 36th month after the month in which it was issued. Under proposed § 61.20 a pilot would be responsible for renewing the airman identity portion of his pilot certificate before the expiration date. The FAA will mail a renewal application to each holder of a pilot certificate in sufficient time for the certificate holder to complete and return the application and receive the new airman identity card portion of the certificate before the expiration date. Renewal procedures would require that a pilot submit by mail to the Airmen Certification Branch a renewal application, fee, code word identification (such as mother's first name), and recent photograph. If a holder of a pilot certificate does not receive a renewal form from the FAA, the holder of the pilot certificate must obtain a renewal application from a Flight Standards District Office, pilot

examiner, or the Airmen Certification Branch and must complete and submit the application to the Airmen Certification Branch. After reviewing the renewal application, if the Airmen Certification Branch determines that a question exists regarding the identification of the airman, it may require that the applicant appear in person at his or her nearest FAA District Office in order that face-to-face identification can be made.

The FAA considered tying renewals of pilot certificates to medical examination requirements, so that pilots who are required to have a medical examination every 2 years could apply for renewal every 4 years, at the time of their medical examination. However, the FAA decided not to require face-to-face procedures for renewals, and therefore saw no purpose in tying renewals to the time-frame of medical examinations. The FAA decided that a 3-year renewal for pilot certificates would satisfy law enforcement needs and be consistent with aircraft registration renewals.

In this document the term "renewal," when referring to pilot certificates, is used to mean a periodic (3-year) issuance of a pilot certificate required for any pilot who has a pilot certificate with an expiration date (i.e., a certificate issued after the effective date of the rule). The term "reissuance" is used to mean issuing new pilot certificates to replace pilot certificates that were issued before the effective date of the rule.

In accordance with proposed § 61.18, all pilot certificates that were issued before the effective date of the rule would expire 36 months after the effective date. A pilot with a certificate that has no expiration date would have to apply for reissuance of a certificate before the end of the 36th month after the effective date. Application procedures for reissuance would require that an applicant submit an application, fee, and recent passport quality photograph to a designated Aviation Medical Examiner (AME), FAA Flight Standards District Office, or designated pilot examiner. At the time of submission, the applicant would have to show personal identification, such as a driver's license or other acceptable photo ID. The examiner or inspector would verify identification and forward the materials to the Airmen Certification Branch.

The FAA decided that the burden to pilots of applying for reissuance would be minimal, if AME's, in addition to FAA Flight Standards District Offices and designated pilot examiners, could process reissuance applications. Active pilots, other than glider or free balloon pilots, must have a medical examination every 6 months, 1 year, or 2 years, depending on the class of medical certificate required. Thus a pilot could plan to apply for reissuance at the pilot's next medical examination after the effective date of the rule. The pilot would have to bring the required personal identification and an application for reissuance obtained from the AME or from the FAA to the medical examination.

To allow for an orderly transition to the new certificate form, the FAA would establish a schedule for reissuances. In effect, the proposed schedule establishes dates before which certain groups of certificates would have to be renewed. As proposed in § 61.18, the schedule would conform to the following:

(1) Within 1 year after the effective date, all pilots who fly into or out of the United States would have to have a new certificate. Since these pilots could not be notified by the FAA, they would need to initiate application for the new certificate. Failure to do so would mean that they could not fly into or out of the United States.

(2) Within 2 years after the effective date, all pilots who were issued a certificate in an odd-numbered year before the effective date would have to have a new certificate. The FAA would send notices to these pilots.

(3) Within 3 years after the effective date, all pilots who were issued a certificate in an even-numbered year before the effective date would have to have a new certificate. The FAA would send notices to these pilots.

Regardless of the schedule a pilot may apply for reissuance any time after the effective date. As stated previously, a convenient time to apply would be at the pilot's first medical examination after the effective date of the rule, if the pilot holds a medical certificate. All pilot certificates without an expiration date would automatically expire three years after the effective date.

Failure to apply for reissuance of a certificate or failure to renew a certificate before its expiration date would not require a certificate holder to requalify for the certificate. The certificate holder may submit an application for reissuance or renewal at any time, along with required documentation, to the appropriate FAA representative. If the documentation is acceptable, the Airmen Certification Branch would reissue or renew the certificate as appropriate. A pilot would not be permitted to exercise the privileges of the certificate until the pilot receives the new certificate.

Fees would be charged for new, reissued, and renewed certificates as of the effective date of the rule. Fees are specified in the fee section of this preamble and in proposed § 61.30.

The proposed rules and related procedures would apply to private, commercial, and airline transport certificated pilots only, not to student pilots. Student pilots are not being included because the student pilot certificate has restrictions that preclude its use in flights into or out of the U.S. Student pilot certificates are issued by AME's (issuance of a student pilot certificate is reviewed for compliance by the Aeromedical Certification Division) and may be used for 2 years after the date of issuance. After the effective date of the rule, once a student pilot applied for a pilot certificate (normally within the 2-year period of the student pilot certificate), the applicant would have to comply with the proposed rules and procedures.

The proposed rules do include glider, balloon, and recreational pilots. These pilots can add ratings to and remove limitations from their certificates. Therefore, it is important for the FAA to obtain positive identification at the time of initial application and to require that they have a new certificate with an airman identity card. For reissuance of balloon and glider pilot certificates, an applicant would more likely go to a Flight Standards District Office or designated pilot examiner, since these pilots are not required to have medical certificates. The Airmen Certification Branch would notify these pilots separately of reissuance dates. However, they could apply for reissuance of a certificate before their scheduled reissuance dates.

The proposed rule also contains amendments to other sections of part 61 and to part 183 that are needed for conformance with new procedures.

Section 61.17(a) would be revised to allow 60 days for operating with a temporary certificate rather than the current 120 days. The new temporary certificates would be issued on controlled forms provided to FAA Flight Standards District Offices and to pilot examiners. The forms would have a control number to allow FAA monitoring of the use of the form. Shortening the time allowed for use of the temporary certificate is expected to expedite processing of certificate applications. Currently applications are not always submitted directly upon issuing a temporary certificate. The proposed revision is not expected to impose any burden on pilots.

Section 61.5 would be amended by replacing the words "pilot certificate" with "the rating card portion of each pilot certificate."

Section 61.11(c) regarding issuance of a pilot certificate on the basis of a foreign pilot license would delete the sentence referring to issuance of pilot certificates without expiration dates, since this would become obsolete. Section 61.75 would be revised to require applicants for a certificate issued on the basis of a foreign license to meet the application requirements and procedures for a pilot certificate.

Sections 61.29 and 61.60 would be amended to require that applicants who request a new certificate, because the original certificate has been lost or destroyed or because of a change of address, must do so in writing and must provide name, signature, date of birth, mother's first name, and other identifying information, as well as any required fee. It should be noted that a certificate should show a current permanent address. If the address on a certificate is not the airman's current address, the airman must notify the Airmen Certification Branch so that the current address is on record as soon as possible. Under the proposed rule, until the airman receives the new certificate, he may use the certificate with his previous address.

Current § 61.77(e)(4) would be amended to change the 24-month expiration requirement on special purpose certificates to 36 months. This would make special purpose certificates consistent with other pilot certificates.

Section 183.21 would be revised by adding a paragraph (f), which adds to the AME responsibilities that of accepting applications for and verifying identity of applicants who are applying for reissuance of a pilot certificate.

The FAA believes that these changes in certification requirements and procedures would correct problems identified by drug enforcement officials. They would provide positive identification of an applicant and a photograph of the pilot, and would generally provide more current information on pilots. In addition, all airman identity card portions of certificates would be machine-readable by equipment in use by Customs at its points of entry. This would allow for comparison of information on the certificate with data in the Treasury Enforcement Communications System (TECS). This data base, managed by the Treasury Department, contains information on convicted felons, suspects, look-out lists, as well as previous arrivals at points of entry.

The FAA considered certain alternative features to the proposal. One alternative was to place both the pilot identification information and pilot ratings on one document. The FAA rejected this solution because it would have required a document of at least passport size, which would probably be opposed by the general aviation community. It seemed more practical to issue two separate wallet-size parts to a certificate and to require that a pilot carry both when exercising the privileges of the certificate. The FAA invites comments on this issue.

The FAA also considered and rejected the concept of a pilot certificate bearing fingerprints as well as a photograph of the pilot. For the FAA to require fingerprints would be costly, both in time and money, would pose numerous practical problems, and would provide only a slight increase in effective pilot identification.

Alterations of Fuel Systems

Drug traffickers sometimes modify an aircraft's fuel system to extend the aircraft's range. In recognition of this, in 1987 the FAA revised 14 CFR part 43, appendix B; § 91.27(c); and § 91.173 (c) and (d) (52 FR 34096; September 9, 1987) to require aircraft with fuel system modifications to have a copy of the accepted approval form (FAA Form 337) on board the aircraft at all times and available for inspection by FAA or Customs personnel. In instances when an aircraft under suspicion either does not have the required document or is unattended and cannot be searched, law enforcement personnel need to know if the aircraft record maintained at the Aircraft Registry shows that a fuel system modification has been approved. In the past this information was not always available because of deficiencies in filing such forms.

In most instances, a Form 337 is required to be submitted to FAA Flight Standards District Offices by the person performing the modification. The District Office is required to forward the forms to the Aircraft Registry within 48 hours of receipt. The Aircraft Registry converts the form into microfiche and files the form as part of the aircraft record as soon as possible. Because the Aircraft Registry has focused its resources on registration and recordation functions for the past several years, it has accumulated a backlog of approximately 300,000 Form 337's. Only a small percentage of these relate to fuel system modifications.

Under current procedures, to determine whether the FAA has been notified that alterations to the fuel system of an aircraft have been made, an investigator would have had to request the entire aircraft record and examine any Form 337 filed on the aircraft. The investigator would also have had to examine the backlog of forms that are in order of registration number to determine if a form had been submitted but not filed in the record. This would be a lengthy manual process.

The Drug Enforcement Assistance Act amends section 605 of the FA Act to authorize and direct the Administrator of the FAA to modify the system for processing forms for major repairs or major alterations of fuel tanks and fuel systems of aircraft to make the processing of such forms better serve the needs of law enforcement officials. The Act requires that changes to the processing system address the following deficiencies:

(1) The lack of a special identification feature to permit such forms to be easily distinguished from other major repair and alterations forms.

(2) The excessive amount of time required for receiving such forms at the Airmen and Aircraft Registry of the Federal Aviation Administration.

(3) The backlog of such forms that are awaiting processing at the Airmen and Aircraft Registry

(4) The lack of ready access by law enforcement officials to information contained on such forms.

On November 28, 1988, the FAA issued an Action Notice (FAA Order A8600.1) requiring each FAA Flight Standards District Office to review any Form 337 received and to send any form that involved a fuel tank system modification to a special section in the Aircraft Registry by first class mail within 24 hours of receipt. The Aircraft Registry updates the automated records to show that such a Form 337 has been received, the date a modification was performed, and a description of the modification. The information in the data bank is accessible through computer terminals by aircraft registration numbers. After updating, the Aircraft Registry adds the forms to the microfiche aircraft record. A field in the automated aircraft record is tagged to indicate that a Form 337 pertaining to fuel system modification is on record.

Any time an inquiry that involves a backlogged Form 337 results in locating a fuel system modification, that form will be keyed into the automated system and put on microfiche in the aircraft record. Eventually all Form 337's will be screened and those pertaining to fuel system modification will be entered into the automated system and filed in the aircraft microfiche record.

Applicability

The procedures specifically targeted by the Drug Enforcement Assistance Act are those concerned with (1) the issuance of certificates of registration of aircraft; (2) the issuance of airman certificates to pilots; and (3) the processing of forms for major repairs or major alterations of fuel tanks and fuel systems. In addition, section 7214 of the Drug Enforcement Assistance Act states:

> This subtitle (including any amendments made by this subtitle) shall only apply to aircraft which are not used to provide air transportation (as defined in Section 101 of the Federal Aviation Act of 1958).

In accordance with section 101 of the FA Act, operations that are not included under the definition of "air transportation" are intrastate common carriage, private carriage for compensation or hire (not held out to the general public), and private aircraft operation (typically individual owner/pilots). Therefore, the amendments of the Drug Enforcement Assistance Act apply only to aircraft used for such operations.

The intent of the above exclusion appears to be to limit the effect of the Act to aircraft that are used in what is commonly referred to as "general aviation." The focus of the Committee report on the Act is on drug trafficking in general aviation aircraft. "General aviation" is not defined in the FA Act but has been used historically (within and outside the FAA) to refer to small airplane operations, which include private aircraft operators and fixed based operations that combine air taxi, pilot instruction, and airplane sales. This latter category of general aviation is considered "air transportation" under the definition in the FA Act and is therefore excluded from the Drug Enforcement Assistance Act even though the type of aircraft used in such operations is also used for drug trafficking.

The exclusion also creates a problem in implementing the Act. In effect it requires the FAA to maintain separate procedures for registration of aircraft used in air transportation and aircraft used in other than air transportation. This distinction can be difficult to discern, especially in the cases of small operators who conduct operations in both air transportation and general aviation. In comparison to establishing one uniform system for all aircraft, a dual system would cost more and be less efficient.

Therefore, to the extent possible, the FAA is proposing one uniform, modernized, efficient system of registration procedures for all aircraft. Registration, reregistration, and renewal procedures will apply to all aircraft whether used to provide air transportation or not. Under Title V of the FA Act, the FAA already has the authority to institute these procedural changes without the specific mandate of the Drug Enforcement Assistance Act. Aircraft used to provide air transportation will, however, not be subject to the fees authorized by the Drug Enforcement Assistance Act and the penalty provisions of the Act. (See later discussion on fees and enforcement.)

On the subject of airman certification, the Drug Enforcement Assistance Act specifically focuses on changes needed in issuing pilot certificates. Therefore, the proposed rule and procedural changes associated with the rule would affect pilots only. Procedures outlined in the action notice for identification of airmen affect all airmen. Student pilots are excluded because of the restrictions that are imposed on student pilot certificates.

It should be noted that while applicability of the Act regarding the issuance of airman certificates is limited to pilots, all other sections of the Act that reference airmen, without making a distinction between types of airmen, apply to all airmen. Section 7209 of the Act, for instance, sets out criminal penalties for certain violations involving airmen and does not limit applicability to pilots.

Fees

The Drug Enforcement Assistance Act is specific on the increases of existing fees and the establishment of new fees. Low fees are now charged for aircraft registration certificates ($5.00), dealer's registration certificates ($10.00), special registration numbers ($10.00), and changed registration numbers ($10.00). The fees have not been increased since 1964 though the cost of providing the services has significantly increased. An applicant for a pilot's certificate does not currently pay a fee.

The Drug Enforcement Assistance Act specifically allows for charging fees for certain services not to exceed the following:

(1) $12.00 for an airman's certificate to a pilot;

(2) $25.00 for registration of an aircraft after transfer of ownership;

(3) $15.00 for renewal of an aircraft registration;

(4) $7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

Under the Act, the amounts established shall be adjusted by the Administrator in proportion to changes in the Consumer Price Index. The fees collected "shall be credited to the account in the United States Treasury from which expenses were incurred by the Administrator for carrying out titles V and VI of this Act and shall be available to the Administrator for paying expenses for which such fees are collected."

The Drug Enforcement Assistance Act also amends the Airline Deregulation Act. The Airline Deregulation Act restricted fees to those that were in effect on January 1, 1973 (no new fees without Congressional approval), and to increases in such fees only in proportion to changes in the Consumer Price Index since 1973. The Drug Enforcement Assistance Act amends the Airline Deregulation Act to allow for the fees specified in the Drug Enforcement Assistance Act.

Accordingly, the FAA is proposing to increase aircraft registration fees and to establish new fees for pilot certificates up to the limits allowed by the Drug Enforcement Assistance Act. Actual fees may be lower than these proposed fees once the FAA has determined the cost of implementing the new procedures.

Since increasing fees for aircraft registration certificates for any aircraft used in air transportation is not allowed under the Drug Enforcement Assistance Act, this fee would be raised in accordance with the FAA's authority under the Airline Deregulation Act, which allows increasing such fees in proportion to the Consumer Price Index.

Accordingly, under proposed § 47.17 certificates of registration for aircraft not used to provide air transportation would be $25.00. Renewals and reregistration for such aircraft would be $15.00. Certificates of registration for aircraft used to provide air transportation would be $15.00. Renewals and reregistrations would be $15.00. Dealer's registration certificates would be $25.00 for the first certificate and $2.00 for each additional certificate issued to the same dealer. No increases are being proposed for other services.

With respect to the reissuance and renewal fees of pilot certificates, in proposed § 61.30, the FAA proposes a fee of $12.00. No fee would be charged for reissuance of an airman identity card portion of a certificate because of change of address. A fee of $2.00 would be charged for issuing a duplicate certificate because the original has been lost, stolen, or destroyed. The fee includes replacement of both parts of the certificate if necessary Any other

existing fees not specifically addressed in this NPRM would remain the same.

While Congress has specifically authorized collecting fees for processing Form 337 fuel tank or fuel system modifications, the FAA has not proposed fees for processing these forms because approximately only 300 such modifications are approved each year, and the administrative costs of establishing a system to collect these fees would exceed the fees received.

Enforcement

The FAA has had the authority under the FA Act to revoke an airman certificate or aircraft registration if a person has been convicted of using an aircraft to commit a Federal or State drug felony or if the FAA has determined that a person knowingly engaged in such an offense or that aircraft was used in such an offense with the owner's knowledge and permission. The law has also provided for civil and criminal penalties in connection with a drug offense for improper registration, fraudulent certificates, etc. These penalties require prosecution by a United States Attorney.

The FAA has rarely revoked an aircraft certificate as a result of drug-related offenses. The lack of enforcement is because of the FAA's lack of investigative resources and inadequate coordination of enforcement and investigation actions that involve Customs, the Drug Enforcement Administration (DEA), and the FAA.

The Drug Enforcement Assistance Act amended the FA Act to correct enforcement deficiencies by—

(1) Establishing new criminal penalties ($15,000/3 years) for registration and certification violations not connected with transporting drugs and more severe criminal penalties ($25,000/5 years) for such violations if connected with drug transportation;

(2) Granting DEA and Customs authority to seize any aircraft used in connection with, or in aiding or facilitating, criminal registration and certification violations; and

(3) Increasing civil penalties for violation of registration requirements from $1,000 per violation to $10,000 per violation (not to exceed $50,000) and granting the FAA the authority to assess these penalties administratively, without having to refer the action to a United States Attorney for prosecution.

The proposed rule would amend § 13.16 to reflect these amendments in the FA Act for aircraft not used to provide air transportation. The FAA has not proposed that these increased penalties apply to aircraft used to provide air transportation because it does not have that authority under the FA Act and, as previously stated, because of the language of section 7214, the FAA does not have that authority under the Drug Enforcement Assistance Act. In addition, as required by the Drug Enforcement Assistance Act, the FAA, DEA, and Customs will soon enter into a memorandum of understanding on the procedures for carrying out objectives of the new law on seizure of aircraft.

Compliance and Transition

These proposed regulations, if enacted, will require a phased schedule of compliance, since all existing pilot certificates and aircraft registration certificates would be required to be reissued. The effective date of any final rule will be contingent on the availability of resources to obtain, and the time needed to install, equipment necessary to upgrade the Airmen and Aircraft Registry to handle the proposed new requirements.

The proposed schedule of compliance is as follows:

(1) After the effective date of the final rule, all new pilot certificates would be issued in accordance with the rules and procedures proposed.

(2) After the effective date of the final rule, all existing pilot certificates would begin a schedule of reissuance. In the first year following the effective date, all pilots who possess a certificate without an expiration date and who intend to fly out of or into the United States would be reissued certificates upon their request. In the second year, all pilots who possess a certificate without an expiration date issued in an odd-numbered year would be notified of a reissuance schedule and reissued certificates accordingly. In the third year all pilots possessing a certificate without an expiration date issued in an even-numbered year would be notified of a reissuance schedule and reissued certificates accordingly. All pilots possessing certificates without an expiration date could also apply earlier than their scheduled reissuance dates.

(3) Any pilot certificate that has not been reissued and does not contain an expiration date would be ineffective on the last day of the 36th month after the effective date.

(4) After the effective date of the final rule, all new aircraft registration certificates would be issued in accordance with the proposed requirements.

(5) After the effective date of the final rule, all existing aircraft registration certificates would begin a schedule for reissuance based on the month the original certificate was issued. Aircraft owners would be notified of their scheduled reissuance date. Aircraft owners could apply for reissuance in advance of their scheduled reissuance date.

(6) Any registration certificate that has not been reissued and does not contain an expiration date would be ineffective on the last day of the 36th month after the effective date.

Any pilot certificate and aircraft registration certificate would be invalid after the expiration date that appears on that certificate. Use of an invalid certificate could result in civil or criminal penalties in accordance with the law. Since the FAA would notify an aircraft owner or pilot when and how to apply for reissuance or renewal of certificates, it would be essential that the Airmen and Aircraft Registry have an owner's or pilot's current address. If an aircraft owner or pilot does not receive notification of reissuance, it would be the owner's or pilot's responsibility to initiate application procedures. Because there are approximately 750,000 active pilots who would need to be reissued certificates, submitting applications as soon as possible after the effective date would help to avoid delays.

Regulatory Evaluation

The FAA has performed a section-by-section analysis of the expected potential costs and expected potential benefits of the regulatory proposal regarding parts 13, 47, 61, 91, and 183. The incremental costs of implementing the proposed rule changes would affect aircraft owners and pilots. Although there are incremental processing costs to the FAA, these costs would be recovered by fee revenues. Furthermore, it should be noted that costs of this proposed rule are necessary to carry out the intent of the Congressional mandate in the Drug Enforcement Assistance Act.

Incremental costs to aircraft owners would be for reregistering aircraft, periodically registering aircraft, and paying the processing fees to the FAA. Incremental costs to pilots would be for certificate reissuances, certificate renewals, and paying increased processing fees to the FAA. Together, these costs are estimated to total $9.6 million in the first year, and the present value of costs would total $78.5 million over 20 years. These costs include direct costs to aircraft owners and pilots, including new or increased fees imposed by this regulatory proposal, but do not include increased FAA costs, because all FAA costs incurred as a result of this proposal would be recovered through user fees. Detailed data upon which

these figures are based are incorporated in the full regulatory evaluation contained in the Docket.

The section-by-section analyses of costs detail the increment in fees that aircraft owners and pilots would pay to the FAA as well as the incremental regulatory costs of the proposed rules to the FAA. The FAA's fee revenues would cover not only labor costs associated with issuing certificates and processing forms, in conformity with this regulatory proposal, but also associated capital investment costs. The FAA's fee revenues, consequently, would be greater than its processing costs presented in the section-by-section analyses. Therefore, wherever the FAA's costs are presented in the section-by-section analyses, those costs are attributed as fees borne by aircraft owners or pilots, not by the FAA.

Cost Analysis of Part 13—Investigative and Enforcement Procedures

The proposed changes to part 13 would impose no incremental costs. While some additional resource needs might be identified with the proposed language for § 13.16, the Federal Aviation Administration (FAA) already has initiated action for adding additional litigative, investigative, and support staff to assist the new Drug Interdiction Support Units (DISUs) of the FAA. These additional personnel are expected to be sufficient to meet any resource requirements that would be a consequence of proposed changes to part 13.

Sections 13.16(a) (1) and (5) would impose no costs. They provide for a civil penalty for violation of the law that is the violator's burden, and not a compliance cost to any segment of society.

Section 13.16(b) merely proposes to include those title V violations under the FA Act, as amended, under the civil penalty procedural rules, that provide that persons subject to civil penalties are provided notice and the opportunity of an administrative hearing prior to being assessed a penalty. The proposal does not change the cost assessment made under the prior rulemaking amending part 13, generally (53 FR 34646; September 7, 1988). The FAA cannot anticipate the number of persons who may request a hearing after an order of civil penalty has been issued by the FAA. For this reason, the FAA anticipates that the cost, if any, of complying with this proposed procedural rule change would be minimal.

Section 13.17(a) would impose no costs because it simply limits the scope of the proposed rule to exclude aircraft seizures of the Drug Enforcement Administration or U.S. Customs Service made under Section 902(b)(3) of the FA Act.

Cost Analysis of Part 47—Aircraft Registration

The proposed changes to part 47 would revise the procedures for registering an aircraft. Aircraft registrants would incur costs in filing the revised applications and submitting associated fees. The FAA would spend more time processing applications for certificates of registration. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory costs. The incremental costs to aircraft registrants are estimated to be $4.6 million in the first year. Based on forecasts of the rate of growth in change-of-address transactions, the present value cost to aircraft registrants as a result of these proposed changes to part 47 would be $41.0 million over 20 years. A summary breakdown of these costs is given below, and more detailed cost data are incorporated in the full regulatory evaluation contained in the Docket.

Section 47.13(a) would impose no costs, because it only adds the requirement that the name on the application be typed or legibly printed. The application currently must be signed in ink.

Section 47.15(d) would impose no costs because an aircraft registrant already can request a special number and pay a fee for this privilege. The fee is not scheduled to rise if this proposal is implemented. However, there may be a reduction in the number of special requests, because this proposal provides that special registration numbers may be assigned to an aircraft only in conjunction with a change in aircraft ownership. The costs of the Aircraft Registration Application, evidence of ownership, and registration fee are addressed in § 47.31. The requirement that the written request to change numbers when the seller wants to reserve the registration number must be signed by both the seller and the applicant would impose no cost.

Section 47.15(f) would impose no costs, since the aircraft owner already must submit AC Form 8050-64 within 5 days of affixing the registration number on the aircraft. Limiting the duration of the temporary authority to 45 days would not affect owners, since the FAA Registry would process applications within 30 to 45 days.

Section 47.15(i) would impose no costs, because it simply defines the conditions under which a current aircraft registration number would expire. Costs for reregistration are addressed in the cost analyses of §§ 47.19, 47.31, and 47.32. Costs of renewal are addressed in the cost analyses of §§ 47.31 and 47.46.

Sections 47.17 (a) and (b) would impose no costs, because they merely list the fees and clarify method of payment.

Sections 47.19 (a) and (b) would impose no costs, since they continue present practice.

The maximum incremental annual cost of § 47.19(c) would be to applicants who request a temporary certificate in conformity with the requirements of § 47.32. In these cases, the incremental cost would be the lesser cost of either of two options for submitting an application: personal appearance or overnight mail.

The cost of a personal appearance at an FAA office would depend on the geographical distance between the FAA office and the applicant. While most people are in close proximity to an FAA office, a few people may have to travel as far as 500 miles. The expenses to appear in person would then be the applicant's travel expense plus the value of the applicant's time. If the applicant had to travel 500 miles round trip, travel expenses alone would be $105 based on the current federal mileage charge of $0.21 per mile. However, if a trip to an FAA office is inconvenient, the registration process could be completed using the second option, overnight mail. Under this option, the applicant would send the application and a return overnight mail envelope to the FAA Registry (via overnight mail). The Registry would issue a temporary certificate and mail it to the applicant in the return envelope.

Applicants might find it more convenient and/or less costly to submit the application in person than via overnight mail. In this case, the two-way cost of overnight mail ($17.00) would be the cost to comply with the requirements of this section. Therefore, the FAA assumes that this cost would be the cost of submitting each application. The annual incremental cost of this section would be the $17 cost of two-way mail multiplied by the estimated 80,000 annual applications for certificates of aircraft registration (which also request temporary authority to operate prior to receiving the Certificate of Aircraft Registration), which equals $1.4 million per year, or a present value of $11.6 million over 20 years.

The incremental cost of § 47.31(a) would be the increase in the application fee from $5 per application to $25. The $20 increase, multiplied by 80,000 new applications per year for aircraft registration, equals $1.6 million, the annual incremental cost of the section, or a present value of $13.6 million over 20 years.

The requirement for identification numbers would impose no cost. The original Aircraft Bill of Sale, AC Form 8050–2, or other evidence of ownership is currently required. The cost for a copy or copies of the proof of identification required by paragraph (b) of this section is addressed in the cost analysis of paragraph (b) of this section.

Section 47.31(b) would impose incremental costs on applicants to appear before either a notary public, other person authorized to administer oaths, or an FAA office; to provide evidence that the aircraft registrant is a viable legal entity if the applicant represents an association, partnership, or corporation; and to provide a good quality reproduction of both the photo identification of the applicant and evidence that the registrant is a viable legal entity.

Cost estimates are based on the assumption that all applications for registration would be submitted via overnight mail. Therefore, applicants would be required to appear before a notary public. Notaries public charge between $2 to $5 for each seal, or an average of $3.50. $3.50 multiplied by the total applications filed annually, 150,000 (80,000 applications for new registrations and estimated 70,000 applications for renewals filed annually), equals $525,000.

Of the 80,000 applications filed for new registrations annually, approximately 24,500 are for business-owned aircraft. The average cost of the documents from the business entity's jurisdiction certifying that the aircraft registrant is a viable legal entity would be $6. Therefore the cost would be 24,500 applications multiplied by $6, which equals $147,000 annually.

The cost for a good quality reproduction of the photo identification of the applicant would be $0.10 per copy multiplied by the number of annual registrations and renewals, 150,000, which equals $15,000 annually.

The cost for a good quality reproduction of evidence that the registrant is a viable legal entity would be the annual number of applications filed by associations, partnerships, or corporations (24,500), multiplied by the cost of the good quality reproductions of the evidence, $0.20 (two pages at $0.10 per page), which equals $4,900 annually.

The sum of the costs for this section is $691,900 annually, which equals a present value of $5.9 million over 20 years.

Section 47.32(a) would impose no costs, since aircraft presently may not be operated without a certificate of registration on board. The cost to apply for a temporary authority form is addressed in the cost analysis of § 47.19.

Requests for temporary authority forms, as set forth in proposed § 47.32(b), would impose an incremental cost on the FAA for processing applications and for production of new temporary authority forms on nonforgeable paper.

The cost to the FAA to process the temporary authority applications would be the annual number of applications, 80,000, multiplied by 0.33 hours, the estimated processing time per application, multiplied by $11.95, the average hourly cost (salary plus fringe benefits) for a GS level 6 processor, which equals $318,667 annually.

The annual incremental cost of nonforgeable paper would be the additional cost for paper, $0.10 per sheet, multiplied by the 80,000 applications, which equals $8,000 annually.

Mailing costs are addressed in § 47.19. Therefore, the incremental cost of this section to the FAA would be the cost to process temporary authority applications ($318,667) plus the cost of nonforgeable paper ($8,000), which equals $326,667 annually. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

Section 47.32(c) would impose no costs. The proposal would reduce from 90 days to 45 days the requirement for registrants to apply for a letter of extension if the FAA has not acted upon the aircraft registration application. However, the FAA would expect to act on such applications within 45 days.

Section 47.32(d) would deny the applicant authority to operate the aircraft outside the United States before the registration certificate has been received unless the applicant has a temporary certificate of registration for use outside the United States. The cost of obtaining such a certificate is addressed in the cost analysis of § 47.32(b).

Section 47.39 would impose no costs by showing the effective date of registration as the date of issuance on the Certificate of Aircraft Registration when the requirements of part 47 have been met. The cost of applying for the certificate of registration is addressed in §§ 47.19, 47.31, and 47.32.

Section 47.41(a) would impose no costs, since it merely brings together in one section the conditions by which a certificate of aircraft registration issued by the FAA may remain effective. The incremental costs of certificate expiration to aircraft registrants are addressed in § 47.46.

Section 47.41(b) would entail only negligible costs, because under present requirements the certificate of registration must be returned. This section would only add the stipulation that the certificate be returned within 10 days of termination in all cases mentioned in paragraph (a) of this section or, if the certificate is not available, that an affidavit be submitted to the Registry. The time limitation would not impose any incremental cost of compliance. Further, because certificates must be kept on board the aircraft, certificates are rarely unavailable.

The incremental costs of § 47.45 would be the cost to aircraft registrants for compliance with the requirements of § 47.31(b) plus processing costs and the cost of nonforgeable paper to the FAA. Since registrants presently must notify the FAA of a change of address and since there is no fee charged for processing a change of address, there would be no other compliance costs.

The incremental cost for the registrant would be approximately $4 ($3.50 for the notary public, $0.10 for a copy of the picture, and $0.40 for postage) multiplied by 16,522, the estimated first year's change of address transactions, which equals $66,088 in the first year. The number of aircraft registration change of address transactions is forecast to increase annually by approximately 1,000 transactions for the next three years and then slow to an annual increase of 500 transactions. These forecast transactions are taken into account in calculating the present value of costs over 20 years, $714,277.

The incremental cost for the FAA Registry to process a change of address would be the cost of 5 minutes of preliminary processing time for a GS level 6 processor (at an average cost for salary and fringe benefits of $11.95 per hour), and 15 minutes of review for a GS level 9 processor (at an average cost for salary and fringe benefits of $16.24 per hour), for a processing cost per transaction of $5.06 The incremental cost to process changes of address would be the processing cost, $5.06, multiplied by the number of change of address transactions in the first year, as

noted above, 16,522, which equals $83,532 in the first year.

The FAA would issue a revised Certificate of Aircraft Registration on nonforgeable paper. The cost of nonforgeable paper would be $0.10 per sheet multiplied by 16,522 transactions in the first year, as noted above, which equals $1,652. Therefore, the incremental cost of this section to the FAA in the first year would be the processing cost ($83,532) plus the cost of nonforgeable paper ($1,652), which equals $85,184 in the first year. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The sum of the costs to registrants for this section in the first year is $66,088. Based on the forecast increase in change of address transactions, the present value would be $714,277 over 20 years. Further details are incorporated in the full regulatory analysis contained in the Docket.

Section 47.46(a) would impose no costs, since it would merely define the expiration date of a Certificate of Aircraft Registration. The costs of applying for renewal are addressed in the cost analysis of paragraph (c) of this section.

Section 47.46(b) would impose no costs, because it merely defines the schedule for reregistration. All costs of reregistration are addressed in §§ 47.19, 47.31, and 47.32.

Section 47.46(c) would impose incremental costs on holders of Certificates of Aircraft Registration for applying for renewal and on the FAA for processing renewal applications.

Applicants would be informed of the forthcoming expiration of their certificates by the FAA in sufficient time to apply for renewal. Therefore, applicants who comply with the requirements of § 47.31 would be able to submit applications by mail. The cost of appearing before a notary public and the cost of a good quality reproduction of either the photo ID or the document showing that the applicant is a viable legal entity are addressed in the cost analysis of § 47.31(b).

Therefore, the incremental cost for applicants to apply for renewal would be the renewal fee, $15, plus the cost of mailing the application, $0.40, multiplied by the number of annual renewals (Approximately 70,000 aircraft of the total 298,112 aircraft are estimated to renew their certificates yearly), which equals $1.1 million annually.

The incremental cost to the FAA would be the renewal application processing cost plus the cost of nonforgeable paper. Application processing would require about 5 minutes of preliminary processing time by a GS level 6 processor (at an average cost for salary and fringe benefits of $11.95 per hour), and 15 minutes of review by a GS level 9 processor (at an average cost for salary and fringe benefits of $16.24 per hour), which equals a processing cost of $5.06 per transaction. Therefore, the annual incremental cost for the FAA would be processing costs, $5.06, plus the incremental cost of nonforgeable paper, $0.10, multiplied by the annual number of applications for renewal, 70,000, which equals $361,200. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The sum of the costs of this section is the $1.1 million annual cost to applicants, which equals a present value of $9.2 million over 20 years.

Section 47.49(a) would entail only negligible costs, because there have been few reported lost, stolen or mutilated registrations due to the requirement that the registration certificates must remain on board aircraft.

Section 47.49(b) would impose no costs, because it would not change present practice.

Section 47.49(c) would impose no costs, since it merely would allow the FAA Aircraft Registration Application to be used to request a replacement certificate.

The removal of § 47.51 would impose no costs. The section requires the FAA Registry to verify aircraft registrations every 36 months. This section would be unnecessary with the proposed new registration and renewal requirements.

Sections 47.63 (a) and (b) would impose no costs, because they merely define the procedure for obtaining a Dealer's Aircraft Registration Certificate, AC Form 8050-6. The incremental costs of these sections are addressed in the cost analyses of §§ 47.19, 47.31, and 47.32.

Cost Analysis of Part 61—Certification: Pilots and Flight Instructors

Proposed changes to part 61 would revise the procedures by which pilots would obtain their airman certificates and the FAA would process applications for a pilot's certificate. Pilots would incur incremental costs in filing the new application and in fees. The FAA would spend more time processing applications for pilot's certificates. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The incremental cost to pilots in the first year as a result of these proposed changes to part 61 would be $3.9 million. Based on FAA forecasts of the number of active pilots (excluding student pilots), the present value cost to pilots would be $35.3 million over 20 years. A summary breakdown of these costs is given below, and more detailed data are incorporated in the full regulatory evaluation contained in the Docket.

Section 61.3(a) would impose no costs, because the requirement that the pilot must have in his personal possession both parts of the proposed certificate is no different from the current rule except to specify that the new certificate has two parts. The cost of the two-part certificate is addressed in the cost analyses of §§ 61.18 and 61.19.

Section 61.5(b) would impose no costs, since it would merely replace the words "pilot certificates" with "the rating card portion of each pilot certificate".

Section 61.11(c) would impose no costs, because it merely would delete an obsolete sentence.

Section 61.17(a) would impose no costs, because the FAA would provide a pilot's certificate within about 43 days, much earlier than the proposed allowable 60 days. Costs for the new temporary certificates are addressed in the cost analysis of proposed § 61.19(c).

Sections 61.18 (a), (b) and (c) would impose no costs. They merely set forth the timetable for pilots to follow in applying for reissuances in order to maintain operating privileges, including the privilege to fly into or out of the United States.

Section 61.18(d) would impose incremental costs on pilots for exchanging a pilot's certificate that does not have an expiration date for a renewable pilot's certificate. The FAA would incur costs for processing the reissuances.

A pilot would have three means to forward an application for certificate reissuance. The pilot could submit the application through an aviation medical examiner (AME), through a pilot examiner, or in person at an FAA District Office. Since active pilots must have a medical examination every 6 months, 1 year, or 2 years, depending on the class of medical certificate, a pilot could plan to apply for reissuance at the pilot's next medical examination, thereby minimizing the burden to pilots of applying for reissuance. This minimal

burden is assumed in calculating the incremental cost to pilots for applying for reissuance.

The incremental cost per application for reissuance would be the application fee, $12, plus the cost of the passport-quality photograph, $9, which equals $21. Costs for AME's services are attributable to § 183.21 and are addressed in the cost analysis of that section. There are presently approximately 553,637 active pilots (excluding student pilots). Since only one-third of all pilots would be applying each year for reissuances during the transition period, the incremental cost for pilots in the first year would be one-third of 553,637 pilots multiplied by the incremental cost, $21, which equals $3.9 million.

Prior to passage of the Anti-Drug Abuse Act of 1988, the FAA initiated action to modernize the FAA Registry, including modification and handling of applications and certificates. Therefore, the regulatory cost of this section to the FAA would be for processing applications.

The number of active pilots who would apply for reissuance in the first year of the three-year transition is one-third of the 553,637 active pilots, which equals 184,546 pilots. Therefore, the estimated processing cost to the FAA for reissuances for the first year would be 184,546 multiplied by 0.25 hours, the processing time per application, multiplied by $16.24, the average hourly and fringe benefits of a GS level 9 processor, which equals $749,257 in the first year. Costs would increase with each subsequent year of the three-year transition period in proportion to increases in the active pilot population. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The cost to pilots for this section would be $3.9 million annually, or a present value of $9.7 million for the three-year transition period.

Section 61.19(c) would impose an incremental cost on pilots for filing renewal applications. The FAA would incur costs for processing renewal applications and for the nonforgeable paper.

Pilots would file renewal applications starting in the fourth year after the effective date of the rule. Based on the 184,546 active pilots who would seek reissuance in the first year of the three-year transition, increased by one percent annually, approximately 190,138 pilots would be filing applications for renewal in the fourth year. (A detailed documentation for this estimate is incorporated in the full regulatory evaluation contained in the Docket.) Therefore, the incremental cost for pilots to file a renewal application in the fourth year after the effective date of the rule would be the renewal fee, $12, plus the cost of the photograph, $9, multiplied by 190,138 pilots, which equals $4.0 million in the fourth year after the effective date of the rule. This yearly cost would increase proportionately with pilot population growth (one percent annually) for each subsequent year.

The FAA's processing cost would be the incremental processing time, 0.25 hours, multiplied by the average hourly salary and fringe benefits of a GS level 9 processor, $16.24, multiplied by 190,138 renewal applications, which equals $771,960 in the fourth year after the effective date of the rule.

The incremental cost of nonforgeable paper would be $0.10 per page multiplied by 190,138 pilots submitting applications, which equals $19,014 in the fourth year after the effective date of the rule.

Thus, the FAA's cost in the fourth year after the effective date of the rule would be the processing cost ($771,960) plus the cost for nonforgeable paper ($19,014), which equals $790,974. Costs would increase with each subsequent year in proportion to increases in the active pilot population. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The cost for this section to applicants for renewal would be $4.0 million in the fourth year after the effective date of the rule, or, based on the forecast rate of growth of pilots, a present value of $25.5 million for costs incurred during the 17 years following the three-year transition period. (Note that present value costs for the three-year transition period are addressed in the analysis of costs of § 61.18(d).)

Section 61.20 would impose no costs, because it simply clarifies the pilot's responsibility for renewal of the airman identity portion of the pilot's certificate. The costs of renewal are addressed in § 61.19(c).

Section 61.29 would impose no costs, since adding the applicant's signature and mother's first name and substituting the words "the required fee" for the words "$2" would cost nothing. The fees schedule would be shown in proposed § 61.30.

New §§ 61.30(a) and (b) would impose no costs, since they merely list the fees and clarify method of payment.

Section 61.60 would impose no costs for providing the additional required information on notification of change of address.

Section 61.75(b)(4) would impose no costs, since it merely clarifies a condition of a pilot certificate issued on the basis of a foreign pilot license.

Section 61.75(j) would impose no costs, because it would merely correct the language pertaining to pilot certificates issued on the basis of a foreign pilot license to correspond to the proposed rules for pilot certificate reissuance and renewal set forth in proposed §§ 61.18 and 61.19. The incremental costs of all pilots certificates are addressed as part of the incremental costs attributed to §§ 61.18 and 61.19.

Section 61.77(e)(4) would impose no costs, because it merely would correct the language to correspond to the duration proposed for all other pilot certificates (except student pilot certificates) in § 61.19(c). Special purpose certificates are addressed as part of the incremental cost of §§ 61.18 and 61.19.

Cost Analysis of Part 91—General Operating and Flight Rules

The proposed change to part 91 is a non-substantive change that conforms § 91.203(a)(2) to the proposed amendments to part 47. The FAA will be issuing a document allowing temporary authority to operate an aircraft in lieu of the second duplicate copy (pink) of the aircraft registration application referred to in current § 47.31(b). No additional costs are incurred by the FAA on registrants beyond those discussed in the cost analysis of part 47.

Cost Analysis of Part 183—Representatives of the Administrator

The proposed change to § 183.21(f) would expand aviation medical examiner authority to include accepting applications for and verifying the identity of applicants for reissuance of pilot certificates under § 61.18. The incremental costs of this proposed change, approximately $922,728 in the first year, would be borne by either AMEs or pilots, depending on whether or not the AME passes the cost on to the pilot as a fee increase. The present value of this cost, based on a forecast rate of growth of one percent annually in the pilot population, would be $2.3 million over the 3-year transition period.

Based on the premise and calculations explained in the cost analysis of

§ 61.18(d), when AMEs accept applications for and verify identity of applicants for reissuance of pilot certificates, they could charge a fee for this additional service. The incremental fee very likely would be no more than 5 percent of the average pilot examination cost. Since examinations typically cost between $50 and $150, a 5 percent increase would be between $2.50 and $7.50 per exam, or an average of $5 per exam.

The incremental cost of this section in the first year could be the average incremental fee charged by an AME, $5, multiplied by one-third of 553,637 pilots, the number of pilots seeking reissuance in the first year, which equals $922,728. The present value of this cost, based on a forecast rate of growth of one percent annually in the pilot population, would be $2.3 million over the 3-year transition period.

Benefits

The primary benefit of this proposal is expected to be the effect it would have in reducing the amount of illegal drugs smuggled into the United States by general aviation aircraft. Additional expected benefits would include increased efficiency in law enforcement procedures, improved safety in the law enforcement environment, and better treatment for legitimate aircraft owners and pilots. Congress has determined that, at the present time, smuggling of drugs into the United States by such aircraft is a major contributing factor in the illegal drug crisis facing the nation. As a result of that determination, the mission of the Federal Aviation Administration has been expanded to include the provision of assistance to law enforcement agencies in the enforcement of laws relating to the regulation of controlled substances, to the extent consistent with aviation safety.

Actions Linked to Proposed Rules

Since procedures are covered primarily in guidance materials rather than in regulations, some of the FAA's actions to correct procedural deficiencies in airman certification and aircraft registration do not require rule changes. Two key Action Notices in this regard address pilot certification procedures and handling of fuel tank system modification documents in the aircraft registration process. Quantification of the benefits of these non-rulemaking actions is not feasible, nor would attempts at imprecise estimates be practical.

Issuance of the action notice (discussed above in the Pilot Certification section of the Preamble) changing the procedures relating to the airman certification process will assist law enforcement agencies by requiring applicants to present positive identification, including photograph, signature, and actual residential address. Although statistical data on the subject are not maintained, it is widely recognized that a significant number of drug trafficking pilots use fictitious identification and licenses in furtherance of their illegal activities. The proposed changes in certification regulations, which call for an airman identity card will, when linked together with the Action Notice, significantly reduce the number of false and fraudulent licenses in use today, and will severely hinder the ability of criminals to rent, lease, or operate aircraft under assumed or fictitious names.

Issuance of the Action Notice requiring expedited handling of fuel tank system modification documents (Form 337) will assist law enforcement officers, and particularly Customs Officers in making sound enforcement decisions based on more accurate information.

Drug traffickers often modify an aircraft's fuel system to extend its range, and FAA personnel must be able to determine quickly and accurately whether or not such a modification was approved. The Customs Service is responsible for enforcing the provisions of the Customs Enforcement Act of 1986. Title 19 of the U.S. Code, Section 1590, entitled "Aviation Smuggling," specifies that an unapproved modification to the aircraft's fuel system is prima facie evidence that the aircraft was used in connection with, or to aid or facilitate a violation of that law. During 1988, the Customs Service's aviation smuggling groups seized a total of 72 aircraft. Although the Custom Service's seizure tracking system does not identify the exact number of seizures made for this type of violation, certainly a large percentage, 30 percent to 40 percent, contained modifications to their fuel systems. Additionally, the provision of more current and accurate records by the FAA will effectively save the costs of enforcement actions taken that are based on erroneous information.

Current Airmen Identity Card With Picture

As with aircraft registration, the periodic updating of the Airman Identity Card would assist law enforcement by providing more current information as to addresses and physical appearance of suspect pilots. The ability of law enforcement to immediately verify the identity of a pilot through the use of picture identification is invaluable. Officer safety is increased when the officer is able to confirm visually the identity of the person confronted. Further, visual confirmation may negate the need to run more extensive records checks.

Enforcement Actions

The proposed changes to part 13 would implement the provisions of the Drug Enforcement Assistance Act of 1988 that strengthen the authority of the FAA, law enforcement agencies, and particularly the Drug Enforcement Agency and the U.S. Customs Service, to initiate enforcement actions based on registration and certification violations. Specifically, the law established:

- New criminal penalties for registration and certification violations not connected with transporting drugs,
- More severe criminal penalties for registration and certification violations if connected with drug transportation, and
- Authority for both the Drug Enforcement Administration and the Customs Service to seize any aircraft used in connection with, or in aiding or facilitating, criminal registration and certification violations.

Positive Identification

The proposed regulations requiring owners to personally appear before authorized persons, and to produce proof of identity including photo identification, would be a significant help in the prevention of fraudulent and fictitious registration of aircraft. The proposed new registration requirements would allow the FAA to build and maintain an up-to-date database of presumably true registered owners, which Customs officers, the most frequent users, query thousands of times every week.

Aircraft Registration and Pilot Certificate Information

As evidence of the disregard that has been shown within some parts of the aviation community for the current regulations pertaining to notification of sale and reregistration, the Customs Service, during the period October 18, 1988, through April 7, 1989, conducted a nationwide operation that documented 293 instances of aircraft flying internationally in violation of § 91.27(a)(2) of the Federal Aviation Regulations. Eighteen of those aircraft were suspected of being involved in drug smuggling activities, and 57 of the pilots encountered were found not to be of record in the files of the FAA.

Currently, the Customs Service has pilots, interdiction officers, agents and investigators assigned to collocated aviation smuggling groups nationwide. Their enforcement responsibilities

require that they routinely perform inquiries as to the identity of suspect pilots and aircraft. These personnel are not the only ones who need and rely on the data maintained in the FAA files. All Customs Service enforcement and inspection personnel, as well as such personnel in other Federal, state, and local law enforcement agencies have cause to query those aircraft and airman records. Within the Customs Service alone, between 30,000 and 40,000 queries are made on aircraft through the Treasury Enforcement Communications System (TECS) each month by Customs and kindred personnel. A similar number of pilot licenses also are queried.

With the proposed regulatory changes in the aircraft registration process in place, criminals would be forced to use stolen aircraft in smuggling and transportation operations. As stolen aircraft are entered into the National Crime Information Center (NCIC) and TECS relatively quickly, law enforcement's ability to detect them and their illicit cargo would be greatly enhanced.

Machine Readable Registration and Certification Documents

The proposed changes to the regulations that would require documents to be issued on nonforgeable paper and be machine readable would allow the Customs Service to record more quickly and easily the entries of aircraft and pilots as they enter the United States, and would insure the accuracy of data entered into the system. Special agents and criminal investigators regularly use these records as investigative tools in all types of investigations. The timely availability and accuracy of these records is essential to agents whether they are using these records as investigative leads, or presenting them as documentation in court proceedings.

In the course of exercising their duties to inspect aircraft, pilots, and passengers entering the United States, Customs inspectors currently query an average of approximately 11,000 arriving aircraft each month. During inspections, the Customs inspector is required to query the pilot's name and aircraft registration through the TECS database. The proposed regulatory changes would benefit the travelling public by allowing the Customs inspector to conclude the examination more quickly, and would benefit law enforcement officers and drug interdiction efforts by providing the inspector with all the available information about the person and aircraft the inspector is confronting.

The ability of criminals to hide behind fictitious business entities and false personal identification has been a major detriment to effective law enforcement and drug interdiction efforts. The proposed regulations would help correct that problem.

The benefits of these types of regulatory changes cannot always be expressed quantitatively. Officer safety, denial of smuggling methods, and enhanced effectiveness and efficiency in detection and processing are all direct benefits that are not readily quantifiable. These benefits would accrue not only to the Customs Service, but also to other Federal, state, and local law enforcement agencies, and to the innocent travelling public.

Comparison of Benefits and Costs

The FAA cannot ascertain with certainty the number of arrests or aircraft and drug seizures that will be made as a result of the proposed regulatory changes. However, the FAA believes that the costs of the proposed changes would be far outweighed by the benefits in efficiencies in law enforcement procedures and drug interdiction, benefits to legitimate pilots and aircraft owners in treatment and saved time, and benefits to society in the war on drugs.

The Congress has stated in the Drug-Free America Policy of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, sec. 5251, 102 Stat. 4148, 4309 (1988)), that the total cost of drug use to the economy is estimated to be over $100 billion annually. Were this regulatory proposal to achieve the removal from society of 1/10,000th of the economic cost of drug use, that achievement would more than equal the estimated annual cost to society of this regulatory proposal. The FAA believes that such an achievement is a practical and reachable objective.

Regulatory Flexibility Determination

For the reasons noted above, it is certified that the proposed regulations will have no significant economic impact, positive or negative, on a substantial number of small entities. Accordingly, the FAA finds that a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Trade Impact Statement

The FAA finds that the negligible costs that would be imposed by the proposed regulations will not have an impact on international trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparations of a Federalism Assessment.

Conclusion

For the reasons set forth under the heading "Regulatory Evaluation," the FAA has determined that this document involves a proposed regulation that (1) is not a major rule under Executive Order 12291; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," I certify that the proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 13

Administrative practice and procedure, Air transportation, Investigations, Law enforcement, Penalties.

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Reporting and recordkeeping requirements.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies), Health professions, Reporting and recordkeeping requirements.

The Proposed Amendment

The Federal Aviation Administration proposes to amend parts 13, 47, 61, 91, and 183 of the Federal Aviation Regulations (14 CFR parts 13, 47, 61, 91, and 183) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 is revised to read as follows:

Authority: 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1484–1489 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1475, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act) (Revised, 49 U.S.C. App. 106(g)); 49 U.S.C. App. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. App. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. App. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); sec. 7201, et seq., Pub. L. 100–690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); 49 CFR 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.16 is amended by revising paragraph (a)(1), adding a new paragraph (a)(5), and revising paragraph (b) to read as follows:

§ 13.16 Civil penalties: Federal Aviation Act of 1958, involving an amount in controversy not exceeding $50,000; Hazardous Materials Transportation Act.

(a) * * *

(1) Any person who violates any provision of title III, VI, or XII of the Federal Aviation Act of 1958, as amended, and any person who violates any provision of title V of that Act involving an aircraft that is used to provide air transportation, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than $1,000 for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, et seq.).

* * * * *

(5) Any person who violates any provision of title V of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, when the violation involves an aircraft not used to provide air transportation, is subject to a civil penalty of not more than $10,000 for each violation, not to exceed $50,000, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, et seq.).

(b) An order assessing civil penalty may be issued for a violation described in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this section after notice and opportunity for a hearing.

* * * * *

3. Section 13.17 is amended by adding a new sentence at the end of paragraph (a) as follows:

§ 13.17 Seizure of an aircraft.

(a) * * * This section does not apply to the seizure of aircraft under section 902(b)(3) of the Federal Aviation Act by the Drug Enforcement Administration of the Department of Justice or by the United States Customs Service.

* * * * *

PART 47—AIRCRAFT REGISTRATION

4. The authority citation for part 47 is revised to read as follows:

Authority: Secs. 307, 313, 501, 503, 505, 506, and 1102, 72 Stat. 749, 752, 771, 772, 774, 797; 49 U.S.C. App. 1348, 1354, 1401, 1403, 1405, 1406, and 1502; sec. 7201, et seq., Pub. L. 100–690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); and the Convention of the International Recognition of Rights in Aircraft; 4 U.S.T. 1830.

5. Section 47.13(a) is revised to read as follows:

§ 47.13 Signatures and instruments made by representatives.

(a) Each signature on an Application for Aircraft Registration or on a document submitted as supporting evidence under this part must be in ink. The name of each signer on the Aircraft Registration Application must also be typed or legibly printed on the application.

* * * * *

6. Section 47.15 is amended by revising the section heading; changing the word "identification" to "registration" wherever it appears in paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) introductory text, and (a) concluding text; revising paragraphs (d) and (f); and adding a new paragraph (i), to read as follows:

§ 47.15 Registration number.

* * * * *

(d) Any unassigned registration number may be assigned to an aircraft as a special registration number. The following conditions apply to the assignment of special registration numbers:

(1) Except for governmental units, a special registration number may be assigned to an aircraft only once during an ownership of the aircraft.

(2) An applicant's request for a special registration number or to change a registration number on an aircraft to a special registration number must be in writing and must be accompanied by the special registration number fee.

(3) When a seller wants to reserve the registration number currently assigned to the aircraft, a written request to reserve the number by the seller must be signed by both the seller and the applicant for aircraft registration. The request must be accompanied by the fee set forth in § 47.17.

* * * * *

(f) The Aircraft Registry assigns a special registration number on AC Form 8050–64. Within 5 days after the owner affixes the special registration number to his aircraft, he must complete and sign the receipt contained in AC Form 8050–64, state the date he affixed the number to his aircraft and return the original form to the Aircraft Registry. The owner shall carry the duplicate of AC Form 8050–64 in the aircraft as authority to use that registration number. This authority is valid for 90 days after the date of issuance of AC Form 8050–64 or until the date the owner receives a Certificate of Aircraft Registration showing the new registration number issued by the Aircraft Registry, whichever is earlier.

* * * * *

(i) The assignment of a registration number to an aircraft ceases to be effective:

(1) On [3 years after effective date of final rule] for any aircraft that has not been reregistered in accordance with § 47.46(b);

(2) On the expiration date shown on the Certificate of Aircraft Registration for any aircraft whose registration has not been renewed in accordance with § 47.46(c); or

(3) Three years after the sale of an aircraft has been reported to the Aircraft Registry, if the aircraft has not been registered to a new owner.

7. Section 47.17 is revised to read as follows:

§ 47.17 Fees.

(a) The fees for applications under this part are as follows:

(1) Certificate of Aircraft Registration for aircraft used to provide air transportation:

(i) Registration after transfer of ownership—$15.00

(ii) Renewal or reregistration—$15.00

(2) Certificate of Aircraft Registration for aircraft not used to provide air transportation:

(i) Registration after transfer of ownership—$25.00

(ii) Renewal or reregistration—$15.00

(3) Dealer's Aircraft Registration Certificate:

(i) Registration Certificate—$25.00

(ii) Additional Dealer's Certificate (issued to same dealer)—$2.00

(4) Special registration number (each number)—$10.00

(5) Changed, reassigned, or reserved registration number—$10.00

(6) Replacement Certificate if lost, stolen, or mutilated—$2.00

(7) Replacement Certificate if change of address—No Cost

(b) Each application must be accompanied by the proper fee, that may be paid by check or money order to the Federal Aviation Administration. Payments submitted in person at the Aircraft Registry may be made by Visa or Mastercard.

8. Section 47.19 is revised to read as follows:

§ 47.19 Mailing or delivery of applications or other correspondence.

Each application, request, notification, or other communication sent to the FAA under this part must be:

(a) Mailed to the FAA Aircraft Registry, Post Office Box 25504, Oklahoma City, Oklahoma 73125;

(b) Delivered to the Registry at Room 301G, Aviation Records Building, 6500 South MacArthur Boulevard, Oklahoma City, Oklahoma 73169; or

(c) Delivered to an FAA Office under the provisions of § 47.32.

9. Section 47.31 is revised to read as follows:

§ 47.31 Application for Certificate of Aircraft Registration.

(a) *Submission.* An applicant for a Certificate of Aircraft Registration must submit the following:

(1) The original (white), the first copy (green), and the Certification as to True Copy/Identification of the Aircraft Registration Application. AC Form 8050–1. The blue copy of the Aircraft Registration Application is retained by the applicant.

(i) Except for governmental units, each applicant must show on the Aircraft Registration Application his driver's license number if an individual, or the Taxpayer Identification Number (TIN) if other than an individual.

(ii) Each applicant who uses a post office box, post office drawer, or mail drop as the mailing address must, in addition, show on the Aircraft Registration Application, a street address for the applicant's place of residence or business.

(2) The original Aircraft Bill of Sale, AC Form 8050–2, or other evidence of ownership authorized by §§ 47.33, 47.35, or 47.37 (unless already recorded by the Aircraft Registry).

(3) A copy or copies of the proof of identification required by paragraph (b) of this section.

(4) The fee specified in § 47.17.

(b) *Identification procedure.* The applicant or the person who has signed the application form for the applicant must appear before a notary public, other person authorized by law to administer oaths, or at an FAA office listed in § 47.32(b)(2) with the Certification as to True Copy/Identification portion of AC Form 8050–1 and must comply with the following requirements, as applicable:

(1) The applicant must present a photo ID containing a picture of the applicant or the person who has signed the application form for the applicant. A state driver's license containing a photograph of the signer is the preferred photo ID. If a state driver's license is not available, a pilot identification card portion of a pilot certificate or a U.S. passport is acceptable. The applicant must also present a copy of the photo ID presented under this subparagraph. The copy shall be a good quality reproduction on which all printing is legible.

(2) If the applicant is a corporation, association, or partnership, in addition to complying with paragraph (b)(1) of this section, the applicant must present either an original Certificate of Incorporation, a copy of such a certificate certified by the issuing authority, or other document showing that the applicant is a viable legal entity. The applicant must also present a copy of the document presented under this subparagraph. This copy shall be a good quality reproduction on which all printing is legible.

10. Section 47.32 is added to read as follows:

§ 47.32 Authority to operate an aircraft.

(a) An aircraft may be operated only if a Certificate of Aircraft Registration issued by the Aircraft Registry or a temporary certificate sent by wire, as provided in paragraph (d) of this section, is on board the aircraft, unless a temporary authority form to operate without registration is issued by the FAA, as specified in paragraph (b) of this section, and is on board the aircraft. Temporary authority to operate an aircraft is not a certificate of registration and does not indicate FAA approval for registration.

(b) An applicant for a Certificate of Aircraft Registration may request temporary authority to operate the aircraft prior to receiving the Certificate of Aircraft Registration from the FAA Aircraft Registry in the following ways:

(1) The applicant may mail or deliver the application and other documents required by § 47.31 to the Aircraft Registry accompanied by a stamped, self-addressed envelope or a prepaid overnight envelope. The applicant must check the block on the application requesting temporary authority to operate the aircraft. If the Aircraft Registry determines that temporary authority to operate without registration is appropriate, it will return in the envelope provided a temporary authority form allowing operation of the aircraft within the United States.

(2) The applicant may, in person, present to any FAA Flight Standards District Office (FSDO), General Aviation District Office (GADO), Air Carrier District Office (ACDO), International Field Office (IFO), or Civil Aviation Security Field Office (CASFO), the application and other documents required by § 47.31 and a stamped envelope showing the address of the Aircraft Registry as it appears in § 47.19 or the applicant may, in person, present the required documents to the Aircraft Registry. If the FAA office determines that temporary authority to operate without registration is appropriate, it will issue a temporary authority form granting temporary authority to operate the aircraft within the United States.

(3) Paragraph (b) of this section does not apply to aircraft not previously registered or to aircraft last registered in a foreign country, for which temporary authority will not be provided.

(c) A temporary authority form issued by an official of the Aircraft Registry or an FAA office, when carried on board the aircraft, authorizes the operation of the aircraft in the United States until 45 calendar days after the date stamped on the temporary authority form or until the applicant receives the Certificate of Aircraft Registration from the Aircraft Registry, or until the date the FAA Aircraft Registry denies the application, whichever comes first. If the FAA has neither issued the Certificate of Aircraft Registration nor denied the application, the FAA Aircraft Registry issues a Letter of Extension that serves as authority to continue to operate the aircraft without registration within the United States while it is carried in the aircraft with the temporary authority form.

(d) Neither a temporary authority form nor a temporary authority form with a Letter of Extension provides authority to operate the aircraft outside the United States. An applicant who wishes to operate the aircraft outside the United States before the registration certificate has been received may request that the Aircraft Registry review the application on a priority basis and issue a temporary certificate of registration to the applicant for use outside the United States.

11. Section 47.39 is revised to read as follows:

§ 47.39 Effective date of registration.

An aircraft is registered on the date that the Aircraft Registry determines that the requirements of this part have been met. The effective date of registration is shown as the date of issuance on the Certificate of Aircraft Registration.

12. Section 47.41 is amended by revising the introductory language of paragraph (a); deleting the semi-colon after paragraphs (a)(1) through (a)(6) and the phrase "; or" after paragraph (a)(7) and inserting a period at the end of paragraphs (a)(1) through (a)(7); redesignating paragraphs (a)(1) through (a)(9) as paragraphs (a)(2) through (a)(10); adding new paragraphs (a)(1) and (a)(11); and revising paragraph (b) to read as follows:

§ 47.41 Duration and return of Certificate.

(a) Each Certificate of Aircraft Registration issued by the FAA under this subpart is effective, unless suspended or revoked, until the date upon which one of the following events occurs:

(1) The certificate expires.

* * * * *

(11) The date set forth in § 47.46(b) passes and the certificate holder does not apply for reregistration.

(b) The Certificate of Aircraft Registration, with the reverse side completed, must be returned to the Aircraft Registry as follows:

(1) Within 60 days after the death of the holder of the certificate, by the administrator or executor of his estate, or by his heir-at-law if no administrator or executor has been or is to be appointed.

(2) Within 10 days upon the termination of the registration, by the holder of the Certificate of Aircraft Registration in all other cases mentioned in paragraph (a) of this section.

(3) If the certificate is not available, an affidavit describing the aircraft, stating the reason the certificate is not available, must be submitted to the Aircraft Registry within the time specified by paragraphs (b)(1) or (b)(2) of this section.

13. Section 47.45 is revised to read as follows:

§ 47.45 Change of address.

Within 30 days after any change in the mailing address or permanent residence of a registrant, the registrant shall submit an Aircraft Registration Application indicating the change of address and comply with § 47.31(b). Upon acceptance the Aircraft Registry will issue a revised Certificate of Aircraft Registration without charge.

14. Section 47.46 is added to read as follows:

§ 47.46 Reregistration and renewal registration.

(a) A Certificate of Aircraft Registration issued on or after [Effective date of final rule] will expire at the end of the 36th month after the month in which it is issued.

(b) Each aircraft registered under this part before [Effective date of final rule] must be reregistered in accordance with this paragraph. Each applicant for reregistration must comply with § 47.31, except for paragraph (a)(2) of § 47.31. Regardless of the year the aircraft was registered, each holder of a registration certificate issued in a given month shall apply between [the effective date] and [36 months after the effective date], depending on the month the certificate was issued.

(c) Each holder of a Certificate of Aircraft Registration containing an expiration date must apply for renewal at least 45 days before the expiration date of the aircraft registration by complying with § 47.31, except for paragraph (a)(2) of § 47.31.

15. Section 47.49 is revised to read as follows:

§ 47.49 Replacement of Certificate.

(a) A replacement Certificate of Aircraft Registration will be issued when the Registry receives a written request, the documents required by § 47.31(b), the fee specified by § 47.17, and the certificate holder's certification that the original certificate is lost, stolen, or mutilated. The replacement certificate will be sent to the certificate holder's mailing address, or to another mailing address if so requested in writing by the certificate holder or agent.

(b) The certificate holder may request a temporary certificate of registration pending receipt of a replacement certificate. The Registry issues temporary certificates of registration in the form of a collect wire that must be carried in the aircraft until receipt of the replacement certificate.

(c) The Aircraft Registration Application may be used to request a replacement certificate.

§ 47.51 [Removed]

16. Section 47.51 is removed.

17. Section 47.63 is revised to read as follows:

§ 47.63 Application for Dealer's Aircraft Registration Certificates.

A manufacturer or dealer that wishes to obtain a Dealer's Aircraft Registration Certificate, AC Form 8050-6, must:

(a) Submit an Application for Dealers' Aircraft Registration Certificates, AC Form 8050-5; and

(b) Comply with § 47.31(a)(3), (a)(4), and (b).

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

18. The authority citation for Part 61 is revised to read as follows:

Authority: 9 U.S.C. App. 1354(a), 1355, 1401, 1421, 1422, and 1427; 49 U.S.C. App. 106(g) (Revised, Pub. L. 97-449; Jan. 12, 1983); Sec. 7201, et seq., P.L. 100-690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988).

19. Section 61.3(a) is amended by adding a new sentence at the end to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* * * * If a pilot has been issued a 2-part certificate under § 61.18 consisting of an airman identity card and a rating card, both parts of the certificate must be in his personal possession.

* * * * *

§ 61.5 [Amended]

20. The introductory language of § 61.5(b) is amended by deleting the words "pilot certificates" and inserting in their place the words "the rating card portion of each pilot certificate."

§ 61.11 [Amended]

21. The last sentence of § 61.11(c), which reads, "A certificate without an expiration date is issued to the holder of the expired certificate only if he meets the requirements of § 61.75 for the issue of a pilot certificate based on a foreign pilot license.", is deleted.

§ 61.17 [Amended]

22. Section 61.17(a) is amended by changing "120" to "60".

23. Section 61.18 is added to read as follows:

§ 61.18 Expiration and reissuance of all pilot certificates (except student pilot certificates).

(a) After [Insert date 1 year after the effective date] no person who holds a pilot certificate that does not have a specific expiration date may exercise the privileges of that certificate to fly into or out of the United States.

(b) After [Insert date 2 years after the effective date] no person who holds a pilot certificate that does not have a specific expiration date and that was issued in an odd-numbered year may exercise the privileges of that certificate.

(c) After [Insert date 3 years after the effective date], no person who holds a pilot certificate that does not have a specific expiration date and that was issued in an even-numbered year may exercise the privileges of that certificate.

(d) Each person who holds a pilot certificate that does not have an expiration date and that was issued before [insert effective date] may exchange that certificate for a renewable pilot certificate, at any time after [insert effective date], without a further showing of competency, by submitting an application for reissuance on a form and in a manner prescribed by the Administrator.

24. Section 61.19 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 61.19 Duration of pilot and flight instructor certificates.

* * * * *

(c) *Other pilot certificates.* The airman identity card portion of a pilot certificate (other than a student pilot certificate) issued under this part after [effective date] expires at the end of the 36th month after the month in which it is issued. * * *

* * * * *

25. Section 61.20 is added to read as follows:

§ 61.20 Renewal of pilot certificate.

Each pilot is responsible for renewing the airman identity portion of his pilot certificate before the expiration date on a form and in a manner prescribed by the Administrator.

§ 61.29 [Amended]

26. Section 61.29 is amended by adding the words "signature, mother's first name," before the words "date and place" in paragraph (a)(1); and by deleting the words "$2" in paragraph (a)(2) and adding in their place the words "the required fee".

27. Section 61.30 is added to read as follows:

§ 61.30 Fees.

(a) The fees for applications under this part are as follows:

(1) Pilot certificate including airman identity card and ratings card—$12.00

(2) Renewal or reissuance of pilot certificate—$12.00

(3) Replacement Certificate if lost, stolen, or mutilated—$2.00

(4) Replacement Certificate if change of address—No Cost

(b) Each application must be accompanied by the proper fee, that may be paid by check or money order to the Federal Aviation Administration.

§ 61.60 [Amended]

28. Section 61.60 is amended by adding a sentence at the end of the section that reads: "Notification in writing must include the name, signature, date of birth, mother's first name, social security number (if any) of the person to whom the certificate is issued, the certificate number, the previous permanent mailing address, and the new permanent mailing address.

29. Section 61.75 is amended by removing "and" from the end of paragraph (b)(2) and replacing the period at the end of paragraph (b)(3) with the word "; and"; and by adding paragraphs (b)(4) and (j) to read as follows:

§ 61.75 Pilot certificate issued on basis of a foreign pilot license.

* * * * *

(b) * * *

(4) He complies with application procedures prescribed by the Administrator.

* * * * *

(j) The airman identity card portion of any pilot certificate issued under this section expires at the end of the 36th month after the month in which it is issued. A pilot is responsible for renewing the airman identity card portion of his pilot certificate before the expiration date on the certificate.

§ 61.77 [Amended]

30. Section 61.77(e)(4) is amended by changing "24 months" to "36 months".

PART 91—GENERAL OPERATING AND FLIGHT RULES

31. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; 49 U.S.C. App. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 91.203 [Amended]

32. Section 91.203(a)(2) which will become effective on August 18, 1990 (See 54 FR 34284, Aug. 18, 1989) is amended by deleting the words "the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b)" and inserting in place thereof "temporary authority to operate an aircraft as provided in § 47.32(b) of this chapter."

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

33. The authority citation for part 183 is revised to read as follows:

Authority: Secs. 301(c), 305, 307(b), 313(a), and 314, 72 Stat. 744; 49 U.S.C. App. 134(c), 1346, 1348(b), 1354(a), 1355, and 1401; sec. 501, 65 Stat. 290; 31 U.S.C. 483a; Sec. 7201, et seq., P.L. 100–690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988).

34. Section 183.21 is amended by adding a paragraph (f) to read as follows:

§ 183.21 Aviation Medical Examiners.

* * * * *

(f) Accept applications for and verify identity of applicants for reissuance of pilot certificates under § 61.18 of this chapter.

Issued in Washington, DC., on February 8, 1990.

Monte Belger,

Associate Administrator for Aviation Standards.

[FR Doc. 90–5133 Filed 3–9–90; 8:45 am]

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federal register

Monday
March 12, 1990

Part IV

Department of Justice

Federal Prison Industries, Inc.
Bureau of Prisons

28 CFR Parts 301 and 513
Inmate Accident Compensation and Control, Custody, Care, Treatment and Instruction of Inmates Production or Disclosure of FBI/NCIC Information; Rule

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 301

Inmate Accident Compensation

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on Inmate Accident Compensation. The regulations are rewritten and reorganized. Major changes include setting the standard rate of payment of lost-time wages at 75%; adding the ability to terminate lost-time wages if the recipient is placed into Disciplinary Segregation; modifying time parameters for filing a claim; adding review provisions similar to those found in other compensation programs; and providing for suspension of benefits upon subsequent incarceration. These changes are designed to improve the efficient operation of the Inmate Accident Compensation program.

EFFECTIVE DATE: April 11, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 724-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its final rule on Inmate Accident Compensation. A proposed rule on this subject was published in the **Federal Register** November 28, 1989 (54 FR 49048 et seq.). No public comment was received. This revision restructures the part into three separate subparts to improve clarity and organization. In subpart A (General), a section on definitions is added. In subpart B (Lost-Time Wages), the standard rate of payment of lost-time wages is set at 75%. This eliminates the need for staff to make a determination of dependent support. The subpart also adds the ability to terminate lost-time wages if the recipient is placed into Disciplinary Segregation. Subpart C (Compensation for Work-Related Physical Impairment or Death) modifies the time parameters for filing a claim. A claim could be filed no more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to the release date. This modification provides a 15 day period prior to release in which the claimant may be examined by Bureau medical staff. A section on review of entitlement is added. This section provides that each monthly compensation recipient shall be required to submit to periodic medical examinations to determine the current status of their physical impairment. It also provides for a reduction in compensation benefits where excessive income is received by the claimant. The subpart also provides for suspension of benefits where a monthly compensation recipient is subsequently incarcerated. Finally, the subpart incorporates a title change from "Associate Commissioner" to "Chief Operating Officer."

Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 301

Prisoners.

In consideration of the foregoing, 28 CFR chapter III is amended by revising part 301 as follows:

Dated: February 13, 1990.

G.L. Ingram,

Acting Director, Bureau of Prisons.

1. 28 CFR part 301 is revised to read as follows:

PART 301—INMATE ACCIDENT COMPENSATION

Subpart A—General

Sec.
301.101 Purpose and scope.
301.102 Definitions.
301.103 Inmate work assignments.
301.104 Medical attention.
301.105 Investigation and report of injury.
301.106 Repetitious accidents.

Subpart B—Lost-Time Wages

301.201 Determination of work-relatedness.
301.202 Payment of lost-time wages.
301.203 Continuation of lost-time wages.
301.204 Appeal of determination.

Subpart C—Compensation for Work-Related Physical Impairment or Death

301.301 Compensable and noncompensable injuries.
301.302 Work-related death.
301.303 Time parameters for filing a claim.
301.304 Representation of claimant.
301.305 Initial determination.
301.306 Appeal of determination.
301.307 Notice, time and place of committee action.
301.308 Committee reconsideration.
301.309 In-person hearing before the committee.
301.310 Witnesses.
301.311 Expenses associated with appearance at committee hearing.
301.312 Notice of committee determination.
301.313 Chief Operating Officer review.
301.314 Establishing the amount of award.
301.315 Review of entitlement.
301.316 Subsequent incarceration of compensation recipient.
301.317 Medical treatment following release.
301.318 Civilian compensation laws distinguished.
301.319 Exclusiveness of remedy.

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

Subpart A—General

§ 301.101 Purpose and scope.

Pursuant to the authority granted at 18 U.S.C. 4126, the procedures set forth in this part govern the payment of accident compensation, necessitated as the result of work-related injuries, to federal prison inmates or their dependents. Compensation may be awarded via two separate and distinct programs:

(a) Inmate Accident Compensation may be awarded to former federal inmates or their dependents for physical impairment or death resultant from injuries sustained while performing work assignments in Federal Prison Industries, Inc., or in institutional work assignments involving the operation or maintenance of a federal correctional facility; or,

(b) Lost-time wages may be awarded to inmates assigned to Federal Prison Industries, Inc., or to paid institutional work assignments involving the operation or maintenance of a federal correctional facility for work-related injuries resulting in time lost from the work assignment.

§ 301.102 Definitions.

(a) For purposes of this part, the term "work-related injury" shall be defined to include any injury, including occupational disease or illness, proximately caused by the actual performance of the inmate's work assignment.

(b) For purposes of this part, the term "release" is defined as the removal of an inmate from a Bureau of Prisons correctional facility upon expiration of sentence, parole, or transfer to a community corrections center or other non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(c) For purposes of this part, the term "dependent" is defined as the legally recognized spouse or child of an inmate

for whose support the inmate is legally responsible in whole or part.

§ 301.103 Inmate work assignments.

The unit team of each inmate, which ordinarily designates work assignments, or whoever makes institutional work assignments, shall review appropriate medical records, presentence reports, admission summaries, and all other available information prior to the designation of an inmate to a work assignment in an effort to preclude the assignment of an inmate to a work assignment not compatible with the inmate's physical ability or condition.

§ 301.104 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of the extent of the injury, the inmate shall immediately report the injury to his official work detail supervisor. The work detail supervisor shall immediately secure such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injured inmate. First aid treatment may be provided by any knowledgeable individual. Medical, surgical, and hospital care shall be rendered under the direction of institution medical staff. Refusal by an inmate worker to accept such medical, surgical, hospital or first aid treatment recommended by medical staff may result in denial of any claim for compensation for any impairment resulting from the injury.

§ 301.105 Investigation and report of injury.

(a) After initiating necessary action for medical attention, the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury. The work detail supervisor shall complete a BP-140, Injury Report (Inmate), on all injuries reported by the inmate, as well as injuries observed by staff. The injury report shall contain a signed statement from the inmate on how the accident occurred. The names and statements of all staff or inmate witnesses shall be included in the report. If the injury resulted from the operation of mechanical equipment, an identifying description or photograph of the machine or instrument causing the injury shall be obtained, to include a description of all safety equipment used by the injured inmate at the time of the injury. Staff shall provide the inmate with a copy of the injury report. Staff shall then forward the original and remaining copies of the injury report to the institutional safety manager for review.

(b) The institution safety manager shall ensure that a medical description of the injury is included on the BP-140 whenever the injury is such as to require medical attention. The institution safety manager shall also ensure that the appropriate sections of BP-140, page 2, Injury—Lost-Time Follow-Up Report, are completed and that all reported work injuries are properly documented.

§ 301.106 Repetitious accidents.

If an inmate worker is involved in successive accidents on a particular work site in a comparatively short period of time, regardless of whether injury occurs, and the circumstances of the accidents indicate an awkwardness or ineptitude that, in the opinion of the inmate's work supervisor, implies a danger of further accidents in the task assigned, the inmate shall be assigned to another task more suitable to the inmate's ability.

Subpart B—Lost-Time Wages

§ 301.201 Determination of work-relatedness.

(a) When the institution safety manager receives notice, or has reason to believe, a work-related injury may result in time lost from the work assignment, he or she shall present BP-140, Pages 1 and 2 (with the appropriate sections completed) to the Institution Safety Committee at the Committee's next regularly scheduled meeting. The Safety Committee shall make a determination of the injury's work-relatedness based on the available evidence and testimony. The determination shall be recorded on BP-140, Page 2, a copy of which shall be provided to the inmate.

(b) A determination of work-relatedness for purposes of awarding lost-time wages is not confirmation on the validity of any subsequent claim to receive compensation for work-related physical impairment or death.

§ 301.202 Payment of lost-time wages.

(a) An inmate worker may receive lost-time wages for the number of regular work hours absent from work due to injury sustained in the performance of the assigned work.

(b) Lost-time wages are paid for time lost in excess of three consecutively scheduled workdays. The day of injury is considered to be the first workday regardless of the time of injury.

(c) An inmate may receive lost-time wages at the rate of 75% of the standard hourly rate of the inmate's regular work assignment at the time of the injury.

§ 301.203 Continuation of lost-time wages.

(a) Once approved, the inmate shall receive lost-time wages until the inmate:

(1) Is released;

(2) Is transferred to another institution for reasons unrelated to the work injury;

(3) Returns to the pre-injury work assignment;

(4) Is reassigned to another work area or program for reasons unrelated to the sustained work injury, or is placed into Disciplinary Segregation; or,

(5) Refuses to return to a regular work assignment or to a lighter duty work assignment after medical certification of fitness for such duty.

(b) An inmate medically certified as fit for return to work shall sustain no monetary loss due to a required change in work assignment. Where there is no light duty or regular work assignment available at the same rate of pay as the inmate's pre-injury work assignment, the difference shall be paid in lost-time wages. Lost-time wages are paid until a light duty or regular work assignment at the same pay rate as the inmate's pre-injury work assignment is available.

§ 301.204 Appeal of determination.

An inmate who disagrees with the decision regarding payment of lost-time wages may appeal that decision exclusively through the Administrative Remedy Procedure. (See 28 CFR part 542.)

Subpart C—Compensation for Work-Related Physical Impairment or Death

§ 301.301 Compensable and noncompensable injuries.

(a) No compensation for work-related injuries resulting in physical impairment shall be paid prior to an inmate's release.

(b) Compensation may only be paid for work-related injuries or claims alleging improper medical treatment of a work-related injury. This ordinarily includes only those injuries suffered during the performance of an inmate's regular work assignment. However, injuries suffered during the performance of voluntary work in the operation or maintenance of the institution, when such work has been approved by staff, may also be compensable.

(c) Compensation is not paid for injuries sustained during participation in institutional programs (such as programs of a social, recreational, or community relations nature) or from maintenance of one's own living quarters. Furthermore, compensation shall not be paid for injuries suffered away from the work location (e.g., while the claimant is going to or leaving work, or going to or coming

from lunch outside of the work station or area).

(d) Injuries sustained by inmate workers willfully or with intent to injure someone else, or injuries suffered in any activity not related to the actual performance of the work assignment are not compensable, and no claim for compensation for such injuries will be approved. Willful violation of rules and regulations may result in denial of compensation for any resulting injury.

§ 301.302 Work-related death.

A claim for compensation as the result of work-related death may be filed by a dependent of the deceased inmate up to one year after the inmate's work-related death. The claim shall be submitted directly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

§ 301.303 Time parameters for filing a claim.

(a) No more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to this date, each inmate who feels that a residual physical impairment exists as a result of an industrial or institution work-related injury shall submit a FPI Form 43, Inmate Claim for Compensation on Account of Work Injury. Assistance will be given the inmate to properly prepare the claim, if the inmate wishes to file. In each case a definite statement shall be made by the claimant as to the impairment caused by the alleged injury. The completed claim form shall be submitted to the Institution Safety Manager for processing.

(b) Each claimant shall submit to a medical examination to determine the degree of physical impairment. Refusal, or failure, to submit to such a medical examination shall result in the forfeiture of all rights to compensation. In each case of visible impairment, disfigurement, or loss of member, photographs shall be taken to show the actual condition and shall be transmitted with FPI Form 43.

(c) The claim, after completion by the physician conducting the impairment examination, shall be returned to the Institution Safety Manager for final processing. It shall then be forwarded promptly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(d) It is the responsibility of each claimant to advise the Claims Examiner of his or her current address, in writing, at all times during the pendency of a claim for Inmate Accident Compensation.

(e) When circumstances preclude submission in accordance with the provisions of paragraph (a) of this section, a claim may be accepted up to 60 days following release. Additionally, a claim for impairment may be accepted up to one year after release, for good cause shown. In such cases the claim shall be submitted directly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

§ 301.304 Representation of claimant.

(a) Any person may represent the claimant's interest in any proceeding for determination of a claim under this part, so long as that person is not confined in any federal, state or local correctional facility. Written appointment of a representative, signed by the claimant, must be submitted before the representative's authority to act on behalf of the claimant may be acknowledged.

(b) It is not necessary that a claimant employ an attorney or other person to assert a claim or effect collection of an award. Under no circumstances will the assignment of any award be recognized, nor will attorney fees be paid by Federal Prison Industries, Inc.

§ 301.305 Initial determination.

A claim for inmate accident compensation shall be determined by a Claims Examiner under authority delegated by the Board of Directors of Federal Prison Industries, Inc., pursuant to 28 CFR 0.99. In determining the claim, the Claims Examiner will consider all available evidence. Written notice of the determination, including the reasons therefore, together with notification of the right to appeal the determination, shall be mailed to the claimant at the claimant's last known address, or to the claimant's duly appointed representative.

§ 301.306 Appeal of determination.

(a) An Inmate Accident Compensation Committee (hereafter referred to as the "Committee") shall be appointed by the Chief Operating Officer, Federal Prison Industries, Inc., under authority delegated by the Board of Directors of Federal Prison Industries, Inc., pursuant to 28 CFR 0.99. The Committee shall consist of four members and four alternate members, with any three thereof required to form a quorum for decision-making purposes.

(b) Any claimant not satisfied with any decision of the Claims Examiner concerning the amount or right to compensation shall, upon written request made within 30 days after the date of issuance of such determination, or up to 30 days thereafter upon a showing of reasonable cause, be afforded an opportunity for either an in-person hearing before the Committee, or Committee reconsideration of the decision. A claimant may request an in-person hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(c) Upon receipt of claimant's request, a determination will be made regarding the timeliness of the filing. If the request is timely filed, or if reasonable cause exists to accept the request filed in an untimely manner, the request shall be accepted. Once accepted, a copy of the information upon which the Claims Examiner's initial determination was based shall be mailed to the claimant at the claimant's last known address, or to claimant's duly appointed representative, provided the release of such information is not determined to pose a threat to the safety of the claimant, any other inmate, or staff.

§ 301.307 Notice, time and place of committee action.

(a) Committee action shall ordinarily occur within 60 days of the receipt of claimant's request, except as provided in this section. Notice of the date set for Committee action shall be mailed to the claimant at the claimant's last known address, or to claimant's duly appointed representative. All Committee action shall be conducted at the Central Office of the Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(b) A hearing or reconsideration may be postponed at the option of the Committee, or, if good cause is shown, upon request of the claimant. A claimant may change the request from either hearing to reconsideration or reconsideration to hearing, provided notice of such change is received at least 10 days prior to the previously scheduled action.

§ 301.308 Committee reconsideration.

If the claimant elects to have the Committee reconsider any decision of the Claims Examiner, the claimant may submit documentary evidence which the Committee shall consider in addition to the original record. The Committee must receive evidence no less than 10 days prior to the date of reconsideration, and may request additional documentary evidence from the claimant or any other source.

§ 301.309 In-person hearing before the committee.

(a) The appeal shall be considered to have been abandoned if the claimant fails to appear at the time and place set for the hearing and does not, within 10

days after the time set for that hearing, show good cause for failure to appear.

(b) In conducting the hearing, the Committee is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may conduct the hearing in such manner as to best ascertain the rights and obligations of the claimant and the government. At such hearing, the claimant shall be afforded an opportunity to present evidence in support of the claim under review.

(c) The Committee shall consider all evidence presented by the claimant, and shall, in addition, consider any other evidence as the Committee may determine to be useful in evaluating the claim. Evidence may be presented orally and/or in the form of written statements and exhibits.

(d) A representative appointed in accordance with the provisions of this section may make or give, on behalf of the claimant, any request or notice relative to any proceeding before the Committee. A representative shall be entitled to present or elicit evidence or make allegations as to fact and law in any proceeding affecting the claimant and to request information with respect to the claim. Likewise, any request for additional information, or notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and shall have the same force and effect as if it had been sent to the claimant.

(e) In order to fully evaluate the claim, the Committee may question the claimant and any witness(es) appearing before the Committee on behalf of the claimant or government.

(f) Claimant, or claimant's representative, may question the Committee or any witness(es) appearing before the Committee on behalf of the government, but only on matters determined by the Committee to be relevant to its evaluation of the claim.

(g) The hearing shall be recorded, and a copy of the recording or, at the discretion of the Committee, a transcript thereof shall be made available to the claimant upon request, provided such request is made not later than 90 days following the date of the hearing.

§ 301.310 Witnesses.

(a) If a claimant wishes to present witnesses at the hearing, the claimant must provide the Committee, no less than 10 days before the scheduled hearing date, the name and address of each proposed witness, along with an outline of each witness' testimony. The Committee may limit the number of witnesses who may appear at a hearing, however, the Committee has no authority to compel the attendance of any witness.

(b) Any person confined in a Federal, State, or local penal or correctional institution at the time of the hearing may not appear as a witness, but that person's testimony may be submitted in the form of a written statement.

§ 301.311 Expenses associated with appearance at committee hearing.

Federal Prison Industries, Inc., may not assume responsibility for any expenses incurred by the claimant, claimant's representative, or any witness appearing on behalf of the claimant in connection with attendance at the hearing, as well as any other costs relating to any representative, witnesses, or evidence associated with a hearing before the Committee.

§ 301.312 Notice of committee determination.

The Committee shall mail written notice of its decision to affirm, reverse, or amend the Claims Examiner's initial determination, with the reasons for its decision, to the claimant at the claimant's last known address, or to claimant's duly appointed representative, no later than 30 days after the date of the hearing unless the Committee needs to make a further investigation as a result of information received at the hearing. If the Committee conducts further investigation subsequent to the hearing, the decision notice shall be mailed no later than 30 days after the conclusion of the Committee's investigation.

§ 301.313 Chief Operating Officer review.

Any claimant not satisfied with the Committee's reconsidered decision or decision after a hearing may appeal such decision to the Chief Operating Officer, Federal Prison Industries, Inc., 320 First Street NW., Washington, DC 20534. A written request for such an appeal must be received no later than 90 days after the date of notice of the Committee's decision. The Chief Operating Officer shall review the record and affirm, reverse or amend the Committee's decision no later than 90 days after receipt of claimant's notice of appeal. Written notice of the Chief Operating Officer's decision shall be mailed to the claimant's last known address, or to the claimant's representative.

§ 301.314 Establishing the amount of award.

(a) If a claim for Inmate Accident Compensation is approved, the amount of compensation shall be based upon the degree of physical impairment existent at the time of the claimant's release regardless of when during the claimant's period of confinement the injury was sustained. No claim for compensation will be approved if full recovery occurs while the inmate is in custody and no impairment remains at the time of release.

(b) In determining the amount of accident compensation to be paid, the permanency and severity of the injury in terms of functional impairment shall be considered. The provisions of the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, et seq.) shall be followed when practicable. The FECA establishes a set number of weeks of compensation applicable for injuries to specific body members or organs (section 8107).

(c) All awards of Inmate Accident Compensation shall be based upon the minimum wage (as prescribed by the Fair Labor Standards Act).

(1) For body members or organs covered under section 8107, the minimum wage applicable at the time of the award shall be used as the basis for determining the amount of compensation. Awards regarding injury to body members or organs covered under section 8107 shall be paid in a lump sum. Acceptance of such an award shall constitute full and final settlement of the claim for compensation.

(2) For body members or organs not covered under section 8107, awards will be paid on a monthly basis because such awards are subject to periodic review of entitlement. The minimum wage applicable at the time of each monthly payment shall be used in determining the amount of each monthly payment. Monthly payments are ordinarily mailed the first day of the month following the month in which the award is effective.

§ 301.315 Review of entitlement.

(a) Each monthly compensation recipient shall be required, upon request of the Claims Examiner, to submit to a medical examination, by a physician specified or approved by the Claims Examiner, to determine the current status of his physical impairment. Any reduction in the degree of physical impairment revealed by this examination shall result in a commensurate reduction in the amount of monthly compensation provided. Failure to submit to this physical examination shall be deemed refusal, and shall ordinarily result in denial of future compensation. The costs associated with this examination shall be borne by Federal Prison Industries, Inc.

(b) Inasmuch as compensation awards are based upon the minimum wage, any income received by a compensation recipient which exceeds the annual income available at the minimum wage (based upon a 40 hour work week), including Social Security or veterans benefits received as the result of the work-related injury for which Inmate Accident Compensation has been awarded, shall be deemed excessive. The amount of compensation payable to a claimant with an income deemed excessive shall be reduced at the rate of one dollar for each two dollars of earned and benefit income which exceeds the annual income available at minimum wage. Each monthly compensation recipient shall be required to provide a statement of earnings on an annual basis, or as otherwise requested. Failure to provide this statement shall result in the suspension or denial of all Inmate Accident Compensation benefits until such time as satisfactory evidence of continued eligibility is provided.

§ 301.316 Subsequent incarceration of compensation recipient.

If, subsequent to an award of compensation on a monthly basis, a claimant becomes incarcerated at any federal, state, or local correctional facility, monthly compensation payments payable to the claimant shall ordinarily be suspended until such time as the claimant is released from the correctional facility.

§ 301.317 Medical treatment following release.

Federal Prison Industries, Inc., may not pay the cost of medical, hospital treatment, or any other related expense incurred after release from confinement unless such cost is authorized by the Claims Examiner in advance, or the Claims Examiner determines that circumstances warrant the waiver of this requirement. Generally, the payment of such costs is limited to impairment evaluations, or treatments intended to reduce the degree of physical impairment, conducted at the direction of the Claims Examiner.

§ 301.318 Civilian compensation laws distinguished.

The Inmate Accident Compensation system is not obligated to comply with the provisions of any other system of worker's compensation except where stated in this part. Awards made under the provisions of the Inmate Accident Compensation procedure differ from awards made under civilian workmen's compensation laws in that hospitalization is usually completed prior to the inmate's release from the institution and, except for a three-day waiting period, the inmate receives wages while absent from work. Other factors necessarily must be considered that do not enter into the administration of civilian workmen's compensation laws. As in the case of federal employees who allege they have sustained work-related injuries, the burden of proof lies with the claimant to establish that the claimed impairment is causally related to the claimant's work assignment.

§ 301.319 Exclusiveness of remedy.

Inmates who are subject to the provisions of these Inmate Accident Compensation regulations are barred from recovery under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.). Recovery under the Inmate Accident Compensation procedure was declared by the U.S. Supreme Court to be the exclusive remedy in the case of work-related injury. *U.S.* v. *Demko*, 385 U.S.C. 149 (1966).

[FR Doc. 90-5579 Filed 3-9-90; 8:45 am]
BILLING CODE 4410-05-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 513

Control, Custody, Care, Treatment and Instruction of Inmates Production or Disclosure of FBI/NCIC Information

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on Production or Disclosure of FBI/NCIC Information to update nomenclature and to remove gender-specific language. The intended effect of this document is to improve the efficient operation of the Bureau of Prisons.

EFFECTIVE DATE: April 11, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Production or Disclosure of FBI/NCIC to update nomenclature and to remove gender-specific language. A final rule on this subject was published in the Federal Register June 30, 1980 (45 FR 44228).

Because these amendments are merely editorial in nature and impose no further restrictions on the public, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 513

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter A of 28 CFR chapter V is amended as set forth below.

Dated: February 14, 1990.

G.L. Ingram,

Acting Director, Bureau of Prisons.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 513—ACCESS TO RECORDS

1. The authority citation for 28 CFR part 513 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 513.10 [Amended]

2. In § 513.10, the first sentence is amended by revising "his" to read "his/her", and the second sentence is amended by revising the phrase "National Crime Information Center Computerized Criminal History record (NCIC/CCH)" to read "National Crime Information Center Interstate Identification Index (NCIC/III) record".

§ 513.11 [Amended]

3. In § 513.11(a), "his" is revised to read "his/her".

§ 513.12 Procedures applicable where an FBI criminal history record (NCIC/III) is sought.

4. In § 513.12, the heading is revised as set forth above, paragraph (a) is

amended by revising "National Crime Information Center Computerized Criminal History records" to read "National Crime Information Center Interstate Identification Index", paragraph (b) is amended by revising "NCIC/CCH" to read "NCIC/III", and paragraph (d) is amended by revising "his NCIC/CCH record" to read "his/her NCIC/III record".

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Part V

Department of Transportation

Research and Special Programs Administration

State of Maine Statutes and Regulations on Transportation of Hazardous Materials; Inconsistency Ruling; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-29; Docket IRA-48]

State of Maine Statutes and Regulations on Transportation of Hazardous Materials; Inconsistency Ruling

Applicant: Reichhold Limited.

Statute and Regulations Affected: Maine's statutes and regulations requiring a license for the transportation of hazardous materials, Me. Rev. Sta. Ann. tit. 29, sections 246–B and 246–C (1988) and chapter 11 of the Maine Bureau of State Police regulations; and Maine's statute imposing a fee on hazardous materials transported by railroad, Me. Rev. Stat. Ann. tit. 38, section 1319–I, subsection 4–B (1988).

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. No. 93–633, 49 U.S.C. App. 1801–1813) and the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180) issued thereunder.

Mode Affected: Highway, Railroad.

Issue Date: March 7, 1990.

Ruling: Me. Rev. Sta. Ann. tit. 29, sections 246–B and 246–C (1988) and chapter 11 of Maine's Bureau of State Police regulations, requiring a license for the transportation of hazardous materials, and Me. Rev. Sta. Ann. tit. 38, section 1319–I, subsection 4–B (1988), concerning the imposition of fees on hazardous materials transported by railroad, are inconsistent with the HMTA and the HMR in that they define hazardous materials in a manner different from the HMTA and the HMR.

Summary: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether the State of Maine's statutes and regulations requiring a license for the transportation of hazardous materials, Me. Rev. Stat. Ann. tit. 29, sections 246–B and 246–C (1988) and chapter 11 of the State of Maine Bureau of State Police regulations, and a statute which imposes a fee on hazardous materials transported by railroad, Me. Rev. Stat. Ann. tit. 38, section 1319–I, subsection 4–B (1988), are inconsistent with the HMTA or the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

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I. General Authority and Preemption Under the HMTA

Section 112(a) of the HMTA, 49 U.S.C. App. 1811(a), preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102, 49 U.S.C. App. 1801) and in the Senate Commerce Committee report on section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974)). Through its enactment of the HMTA, Congress gave the DOT the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severaly restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 U.S.C. App. 1811(b); 49 CFR 107.215–107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12,612 entitled "Federalism" (52 FR 41,685 (Oct. 30, 1987)). Secton 4(a) of that Executive order authorizes preemption of state laws only when the Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in an inconsistency ruling proceeding.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for detemining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act of the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, United States Supreme Court decisions on preemption. These include *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the

HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

II. The Application for Inconsistency Ruling

On June 21, 1989, Mr. G. R. Beasant, Transportation Manager for Reichhold Limited [Reichhold], filed an application on behalf of Reichhold for an inconsistency ruling. That application specifically requested that certain provisions of the State of Maine's Bureau of State Police regulations requiring a license for motor vehicles engaged in the transportation of hazardous materials be determined to be inconsistent with the HMTA and the HMR.

To facilitate consideration of all relevant issues, this proceeding was expanded to include the Maine statute which requires such license and the Maine statute which imposes a fee on hazardous materials transported by railroad.

Me. Rev. Stat. Ann. tit. 29, section 246–B.2 requiring a license for certain highway transportation of hazardous materials, states that "[h]azardous materials subject to the requirements of this section shall mean those substances identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986 of [SARA], title III, sections 302 and 313" (Pub. L. No. 99–499, 100 Stat. 1730–31; 1742–47). Pursuant to this statute, Maine promulgated Chapter 11 of the Maine Bureau of State Police regulations governing the display and examination of the license for transportation of hazardous materials. Those regulations apply to "any person * * * who transports certain hazardous materials, identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986, title III, sections 302 and 313." Me. Rev. Stat. Ann. tit. 38, section 1319–I, subsection 4–B, concerning the imposition of fees on hazardous materials transported by railroad, also identifies hazardous materials as those identified in sections 302 and 313 of SARA.

Reichhold contends that SARA is applicable to fixed facility hazardous materials emissions and was never intended to apply to hazardous materials transportation. Reichhold further states that Maine's use of SARA as a basis for its licensing requirement is inconsistent with 49 CFR 171.8, which defines "hazardous materials" as "a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated."

Reichhold states that certain hazardous chemicals covered by sections 302 and 313 of SARA, such as melamine, are not included in the Hazardous Materials Table, 49 CFR 172.101, and that certain hazardous materials in that Table, such as paraformaldehyde, are not covered by section 302 or section 313 of SARA.

Reichhold alleges that it received a summons for violation of Maine state laws for operating without a hazardous materials license. Reichhold states that the material being transported from Quebec, Canada, to Maine was a phenolic resin, which consists of the following substances listed in the Hazardous Materials Table, 49 CFR 172.101: phenol, formaldehyde, and sodium hydroxide. Reichhold states that the substances transported were in concentrations below those defined as constituting a hazardous substance pursuant to 49 CFR 171.8. Reichhold thus contends that phenolic resin is not a "hazardous material" under the HMR.

III. Public Comments

A. General

On Septemer 12, 1989, OHMT published a Public Notice and Invitation to Comment (54 FR 37,764) soliciting public comments on Reichhold's application. It provided for a comment period ending October 20, 1989, and a rebuttal comment period ending December 8, 1989. On November 2, 1989, the comment period and rebuttal comment periods on that application were extended to ensure that all interested parties had an adequate opportunity to comment (54 FR 46,322). The extension provided for a comment period ending December 1, 1989, and a rebuttal comment period ending January 5, 1990.

Comments opposing a finding of inconsistency were filed by the Maine State Police and the Maine Department of Environmental Protection. Comments favoring a finding of inconsistency were filed by the Association of American Railroads, Yellow Freight System, Inc., the Hazardous Materials Advisory Council, Union Pacific System, American Trucking Associations, Inc., and Consolidated Freightways. The National Tank Truck Carriers, Inc. recommended that the petition for an inconsistency ruling be dismissed.

The sole issue in Reichhold's application for an inconsistency ruling is whether Maine's use of SARA as its hazardous materials definition is inconsistent with the HMTA and HMR. Several commenters expanded their responses to include the consistency of Maine's fee requirement itself. Since Maine's fee requirement itself is beyond the scope of the application and this proceeding, comments addressing that issue will not be discussed herein.

B. Comments Opposing Consistency

The Hazardous Materials Advisory Counsel (HMAC) cites Inconsistency Rulings Nos. IR–5, 47 FR 51,991 (Nov. 18, 1982); IR–6, 48 FR 760 (Jan. 6, 1983); IR–18, 52 FR 200 (Jan. 2, 1987); IR–18 (Appeal), 53 FR 28,850 (July 29, 1988); IR–19, 52 FR 24,404 (June 30, 1987); IR–19 (Appeal), 53 FR 11,600 (Apr. 7, 1988); and IR–20, 52 FR 24,396 (June 30, 1987), for the proposition that the classification of a material as hazardous in transportation is the basic building block of the HMTA and HMR, and thus, the definitions must have national uniformity. It contends that the ability of a carrier to comply with HMTA regulations is integrally tied to the clarity and consistency of those regulations.

HMAC, in support of Reichhold, states that certain materials that appear in the SARA list are not regulated as hazardous by the HMTA and HMR and *vice versa*. Hence, HMAC asserts, dual compliance with both the applicable Maine statute and the HMTA and HMR is not feasible because shippers and carriers would be confounded in attempting to comply with both sets of requirements. It states that this could lead to an unwillingness to comply with either set of requirements and result in a serious degradation of safety. In addition, HMAC notes that the technical criteria for listing hazardous chemicals under SARA are not the same as the criteria used by DOT in its HMR designations of materials as hazardous for transportation. Citing IR–3, 46 FR 18,919 (Mar. 26, 1981), HMAC also states that Maine's regulations would delay hazardous materials in transit. Finally, HMAC argues that any similar state permit system found to be consistent with the HMTA and HMR could be used as a model by other states or local authorities, which would lead to a web of varying permit requirements and thus undermine compliance with the HMTA and HMR.

Union Pacific System likewise argues that Maine's definition of hazardous materials is inconsistent with the HMTA and HMR because it is limited to those hazardous substances in the SARA list, which is clearly different from the HMR.

Union Pacific stresses that SARA relates to fixed facilities, not materials in the course of transportation. It further states that section 327 of SARA specifically provides that "except with respect to the provision on emergency notification, Title III does not apply to transportation of any substances or chemical subject to Title III's requirements." Union Pacific also notes that DOT and the Federal courts have held that categorizing commodities as hazardous materials is exclusively a function of DOT. Union Pacific further states that the differences in the Maine and Federal definitions, if not held inconsistent, would cause confusion between the two and would have a negative impact on public safety, which is contrary to the Congressional objectives.

Yellow Freight Systems, Inc. (Yellow Freight) argues that Reichhold is correct in stating that Maine's use of SARA for its hazardous materials definition is inconsistent. Yellow Freight states that it currently has no SARA-based mechanism to indentify hazardous materials shipments of freight. It would, therefore, be forced to pay Maine's annual fee of $50 per truck. Yellow Freight also notes that bills of lading are currently required to reflect materials specified in the HMR Table—not the SARA list. In order to allow states to more stringently regulate toxic or volatile hazardous materials (e.g., Class A or Class B explosives, PCB's), however, Yellow Freight suggests that RSPA "allow a variance [from] hazardous materials regulations on a state-by-state basis" for such substances.

Consolidated Freightways (CF) argues that Maine's use of the SARA list as the basis for its hazardous materials licensing requirements is inconsistent. CF states that a material on the SARA list would not be identified as such on a shipping document prepared by the shipper. Thus, it contends, a carrier would not always know when it was handling a shipment falling under Maine's permitting requirements because there is no DOT requirement that a shipper indicate on its shipping papers when a SARA hazardous substance is being offered for transportation. Therefore, in order to avoid noncompliance, CF states that a carrier is forced to pay the permit fee "just in case" a shipment meets Maine's definition of a hazardous material.

The Association of American Railroads (AAR) argues that Maine's definition of hazardous materials is clearly inconsistent with that contained in the HMR. Citing IR-5, 47 FR 51991 (Nov. 18, 1982), the AAR states that the objective of the HMTA is "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." Moreover, the AAR cities several inconsistency rulings and one court decision for the proposition that it is axiomatic that state definitions of hazardous materials that differ from the HMR are inconsistent. It further argues that the SARA list is directed at fixed facilities and requires that fixed facilities notify states of hazardous substances on site, whereas the HMR is directed at hazardous materials posing a danger when transported. Thus, says the AAR, the list of SARA substances was developed for statutory objectives distinct from the objectives of the HMR. Quoting passages from IR-5, 47 FR 51,991 (Nov. 18, 1982), the AAR also states that Maine's definition of hazardous materials will likely cause potential confusion and thereby threaten public safety.

In the American Trucking Associations' (ATA) rebuttal comments, it supports uniform national regulations which enhance the safe transportation of hazardous materials in a manner that is both cost-effective and not unduly burdensome. ATA argues that Maine's statutes are inconsistent because they are built on a definition of hazardous materials that relies on sections 302 and 313 of SARA, rather than the hazardous materials and substances tables in the HMR. ATA cites IR-5, 47 FR 51991 (Nov. 18, 1982); IR-6, 48 FR 760 (Jan. 6, 1983); and IR-22, 52 FR 46,574 (Dec. 8, 1987), IR-22 (Appeal), 54 FR 26,698 (June 23, 1989), for the proposition that Maine's definition of hazardous materials will decrease safety by reducing uniformity, increasing confusion and creating delay. ATA given an illustration of the potential problem:

> [A]cetic acid is in the Hazardous Materials Table and subject to the Federal hazardous materials transportation regulations in any amount. Moreover, it becomes a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 * * * when packaged in amounts of 5,000 pounds. However, it is never a chemical regulated under section 302 or 313 of SARA and, therefore, would not be subject to Maine's regulations for the transportation of "hazardous materials".
>
> Conversely, ergocalciferol, mechlorethamine, and colchicine are on the SARA list but are not listed under the [HMR]. Under the Maine statute, they would be "hazardous materials" and subject to Maine's transportation restrictions, fee and license system whenever they were carried in quantities in excess of 2,000 pounds. However, these are not hazardous materials within RSPA's definition.
>
> Moreover, because these three substances are not listed in the [HMR] Tables either as a proper name or synonym, there is not a requirement that the shipper identify them * * *. Carriers can only comply with hazardous materials transportation regulations to the extent that they are told which commodities they carry by the shippers of the goods. Maine is attempting to impose a hazardous materials transportation requirement at a point in the transportation requirement at a point in the transportation chain where it is impossible for the carrier to comply * * *. Furthermore, to put the burden upon a carrier or its driver to identify a substance and to know on which list(s) the product may appear is unrealistic and diminishes safety.

ATA also rebuts the Maine Department of Environmental Protection's assertion that the conflict between the EPA and DOT statutes "should be worked out at the Federal level". ATA contends that the preemption problems arises from Maine's legislative attempt to regulate the transportation of hazardous materials with a list that is not the one RSPA developed for the transportation of hazardous materials. ATA notes that there are many Federal lists of materials. ATA notes, for example, that the Occupational Safety and Health Administration has a list of hazardous substances for the workplace which require material safety data sheets. EPA has a list of hazardous substances to establish national ambient air quality standards. ATA sums this argument up by stating that the SARA list was designed for fixed facilities and not for materials that are transported.

C. Comments Supporting Consistency

Although, the Maine State Police comments merely indicated that it was required by legislative mandate to adopt the regulations at issue in this proceeding, the Maine Department of Environmental Protection (Maine) submitted comments supporting the consistency of those regulations.

Maine argues that OHMT should dismiss the application for an inconsistency ruling because of Reichhold's failure to notify the relevant agency and OHMT should refrain from ruling on the consistency of Me. Rev. Stat. Ann. tit. 38, section 1319-I, subsection 4-B *sua sponte* for the lack of factual predicate or ripeness. Maine states that the notice is deficient because it makes no reference to any entity which is transporting a chemical by rail which is on the SARA list and not in the HMR table.

Maine contends that it is possible to comply with both the HMR and Me. Rev. Sta. Ann. tit 38, section 1319-I,

subsection 4–B. Maine notes that the only issue raised by Reichhold is that the SARA list referenced by the Maine statutes contains additional hazardous materials other than those listed in the HMR Table. Maine contends that "the few additional chemicals regulated under SARA impose but *de minimi* extra requirements rather than an obstacle. Thus, adding but a few chemicals to the HMR * * * list raises no substantial obstacle to execution of the HMTA and HMR." Finally, Maine argues that if there is a conflict between the EPA and DOT lists, it should be worked out at the Federal level and not in the context of an inconsistency proceeding.

National Tank Truck Carriers, Inc. (NTTC) argues that Reichhold's application should be dismissed because the petition is too narrow. NTTC further contends that the application for inconsistency should be dismissed because it cannot be evaluated under either the obstacle or duel compliance test.

In addition, NTTC states that "Congress (despite amending Superfund) continues to compel the Secretary to consider 'hazardous substances'—in transportation—to be 'hazardous materials' ". NTTC argues that SARA simply preempts the Secretary's options. Thus, NTTC contends that Maine's reliance on the SARA list as a basis for determining commodities that fall within its fee structure cannot be ruled inconsistent since Maine's requirements merely replicate a legislative directive to the Secretary. NTTC concludes by stating that, although Maine's regulations may be inconsistent with the HMTA, such a determination cannot be made in this proceeding based upon the arguments advanced by Reichhold.

IV. Ruling

A. Preliminary Issues

NTTC argues that the application should be dismissed because the petition is too narrow. Maine argues that OHMT should dismiss the application for an inconsistency ruling because of Reichhold's failure to notify the relevant agency and should refrain from ruling on the consistency of Me. Rev. Stat. Ann. tit. 38, section 1319–I, subsection 4–B *sua sponte* for the lack of factual predicate or ripeness.

RSPA has published procedures that implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings. Although inconsistency rulings are ordinarily made upon the application of a state, political subdivision, or other affected person, OHMT has the authority under 49 CFR 107.209(b) to issue an inconsistency ruling *sua sponte*. Thus, OHMT clearly has the authority to consider the consistency of Maine's statutes and regulations, even in the absence of an application.

Reichhold's application raises an important preemption issue under the HMTA, and all parties engaged in hazardous materials transportation or the regulation of that transportation will be served by OHMT's addressing that issue. OHMT has ensured that the State of Maine has had adequate notice of, and opportunity to comment in, these proceedings.

Consistent with its policy of liberally construing the threshold requirements for obtaining inconsistency rulings, IR–21, 52 FR 37,072 (Oct. 2, 1987), OHMT will address the preemption issue raised in Reichhold's application.

B. Definition of Hazardous Material

Sections 246–B, 246–C, and 1319–I, subsection 4–B of Maine's Revised Statutes, as well as chapter 11 of the Bureau of State Police all define hazardous materials as those "identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986, title III sections 302 and 313." Thus, the statutes and regulations at issue here use the SARA list to define regulated hazardous materials.

Title III of SARA is entitled "Emergency Planning and Community Right-To-Know". Title III of SARA imposes a requirement that owners and operators of facilities at which hazardous chemicals are produced, used, or stored to provide certain information regarding such chemicals to state and local officials. This program was established to provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements which would protect the public in the event of a release of hazardous chemicals. H.R. Conf. Rep. 962, 99th Cong., 2d Sess. 281 (1986).

The House Report on SARA indicates that Title III "covers all facility owners and operators who produce, use, or store hazardous chemicals regardless of the size of the facility or the amount of the hazardous chemical handled." H.R. Rep. No. 253, Part I, 99th Cong., 2d Sess. 291 (1985).

The term "facility" as used in SARA includes all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person. 42 U.S.C. 11049(4). The Committee on Energy and Commerce stated that "it is the clear intent of the Committee that the transportation and incidental storage thereto of hazardous chemicals are not covered by the requirement of" Title III. H.R. Rep. No. 253, Part I, 99th Cong., 2d Sess. 111 (1985).

Section 302 of SARA concerns substances and facilities covered, and notification of EPA of facilities affected, by Title III of SARA. That section defines "hazardous substances" as those substances designated by the EPA Administrator. It also requires facilities which have such substances in excess of established thresholds to notify the State Emergency Response Commission that they are subject to Title III.

Section 313 of SARA addresses "Toxic Chemical Release Forms". That section establishes requirements for annual reporting on releases by the owner or operator of a facility releasing certain toxic chemicals into the environment. Section 313 defines toxic chemicals as those chemicals identified in Committee Print Number 99–169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-know Act of 1986".

Section 327 of SARA contains an exemption paragraph which states that Title III "does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this title, including the transportation and distribution of natural gas." The House Conference Report stated that:

> * * * the provisions of Title III do not apply to transportation or storage incidental to such transportation. The exemption relating to storage is limited to the storage of materials which are still moving under active shipping papers and which have not reached the ultimate consignee. This is consistent with the manner in which storage facilities are treated under the Hazardous Materials Transportation Act. For example, storage of materials in rail cars or in motor carrier warehouses would be exempted from the requirements of Title III * * * if the materials were under active shipping papers. On the other hand, storage of materials in facilities on the site of the consignor or consignee, even if such facilities are primarily transportation-related, are subject to the provisions of Title III, since the storage would occur either before or after actual transportation of the materials.

H.R. Conf. Rep. No. 962, 99th Cong., 2d Sess. 311 (1986). It is, therefore, clear that Congress did not intend that Title III of SARA apply to hazardous materials transportation (e.g., materials moving under an active shipping paper).

Although SARA is an "Act to extend and amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980" (CERCLA), it contains "other purposes" (Pub. L. No. 99–499, 100 Stat. 1613), such as those found in sections 302 and 313, the primary purpose of CERCLA is to provide for a national inventory of inactive hazardous waste sites and to establish a program for appropriate environmental response action to protect public health and the environment from the dangers posed by such sites. H.R. Rep. No. 1016, Part 1, 96th Cong., 2d Sess. 17 (1980). CERCLA also provides authority to the Administrator of the Environmental Protection Agency to take emergency assistance and containment action with respect to such sites. *Id.* On the other hand, Title III of SARA establishes "programs to provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements." H.R. Conf. Rep. No. 962, 99th Cong., 2d Sess. 281 (1986).

CERCLA and SARA, therefore, serve two distinct purposes. Accordingly, the hazardous substances covered by sections 302 and 313 of SARA are different from the list of hazardous substances covered under CERCLA, 42 U.S.C. 9601(14).

In light of the foregoing, NTTC's statement that "Congress * * * continues to compel the Secretary to consider 'hazardous substances'—in transportation—to be 'hazardous materials' " is misleading. It fails to take into account the two different lists of hazardous substances—one under SARA and one under CERCLA. Pursuant to section 306 of CERCLA, DOT is required to list each hazardous substance covered by section 101(14) of CERCLA as a hazardous material under the HMTA. However, the inclusion in the HMR of CERCLA hazardous substances as hazardous materials does not result in the inclusion in the HMR of SARA hazardous substances because there is no analogous "listing" provision in Title III of SARA. Furthermore, even if Maine had chosen to use the CERCLA list instead of the SARA list of substances for its hazardous materials definition, such listing would not be consistent with the HMR. The CERCLA hazardous substances represent only some of the hazardous materials covered under 49 CFR 172.101.

The purpose of the HMTA is to "improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks of life and property which are inherent in the transportation of hazardous materials in commerce" 49 U.S.C. App. 1801. Thus, a primary Congressional purpose of the HMTA was to secure a general pattern of uniform, national regulations, and to a preclude multiplicity of state and local regulations and the potential for varying as well as conflicting regulations concerning hazardous materials transportation. S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974); *National Tank Truck Carriers, Inc.* v. *Burke*, 608 F.2d 819, 824 (1st Cir. 1979).

The HMTA authorizes the Secretary of Transportation to designate the quantity and form of material, or group or class of such materials, which constitutes a "hazardous material." 49 U.S.C. App. 1803. Acting pursuant to that authority, as delegated, RSPA has adopted a body of regulations defining hazardous materials. 49 CFR 172.101 (HMR Table).

RSPA has stated in previous inconsistency rulings that it considers the Federal role in definition of hazardous classes to be exclusive. (IR–5, 47 FR 51,991 (Nov. 18, 1982); IR–6, 48 FR 760 (Jan. 6, 1983); IR–8, 49 FR 46,637 (Nov. 27, 1984); IR–15, 49 FR 46,660 (Nov. 27, 1984)). As stated in IR–5, if a material does not possess the characteristics described in any of the HMR hazard class definitions, it is not a material that "may pose an unreasonable risk to health and safety or property, and application of the HMR to its transportation is not deemed warranted." IR–5, 47 FR at 51,993. Hence, those materials listed in the SARA Table which are not listed in the HMR Table have been determined not to warrant regulation in transportation as posing an unreasonable risk to health, safety or property. Conversely, those materials listed in the HMR Table but not in the SARA Table have been determined to warrant regulation in transportation, notwithstanding their status with respect to fixed facilities.

State or local hazardous materials definitions which result in regulation of more or different hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent with the HMTA and the HMR. IR–5, 47 FR 51,991 and IR–6, 48 FR 760. The specific problems with different hazardous materials definitions were identified in earlier inconsistency rulings:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations. This is precisely the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA (49 U.S.C. 1811).

IR–6, 49 FR 760, 764.

> The HMR are, in and of themselves, a comprehensive and technical set of regulations which occupy approximately 1,000 pages of the Code of Federal Regulations * * * For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme. Thus, shippers and carriers doing business in the City must know not only the classification of hazardous materials under the HMR and the regulatory significance of those classifications, but also the City's classifications and their significance. Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety.

IR–5, 47 FR 51,991, 51,994.

> If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of * * * materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety.

IR–15, 49 FR 46,660 (Nov. 27, 1984).

For those reasons the Federal role in defining hazardous materials with respect to hazardous materials transportation is exclusive, and state and local definitions of hazardous materials differing from the HMR are inconsistent with the HMR. IR–18, 52 FR 200 (Jan. 2, 1987); IR–18 (Appeal), 53 FR 28,850 (July 29, 1988); IR–19, 52 FR 24,404 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987); IR–19 (Appeal), 53 FR 11,600 (Apr. 7, 1988); IR–20 52 FR 24,396 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987); IR–21, 52 FR 37,072 (Oct. 2, 1987); IR–21 (Appeal), 53 FR 46,735 (Nov. 18, 1988); IR–26, 54 FR 16,314 (Apr. 21, 1989), correction 54 FR 21,526 (May 19, 1989); *Missouri Pacific RR Co.* v. *Railroad Comm'n of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989); *Union Pacific RR Co.* v. *City of Las Vegas*, No. CV–LV–85–932 HDM (D. Nev. 1986).

These same principles apply to Maine's statutes and regulations under consideration in this proceeding. Maine's statutory and regulatory definitions of "hazardous material" are different than the HMR definition. Maine's definitions include materials which are not regulated under the HMR and exclude other materials which are regulated under the HMR. Therefore,

Maine's use of its definitions as the basis for requiring a license for, or imposing a fee on, the transportation of hazardous materials is inconsistent with the HMR, and therefore, preempted.

C. Fee Requirements

Although the consistency of the fee requirement itself is not at issue in this proceeding, reasonable state or local fees on hazardous materials transportation to fund consistent governmental activities have been determined to be consistent with the HMTA and the HMR. See IR-17, 51 FR 20,926 (June 9, 1986); IR-17 (Appeal), 52 FR 36,200 (Sept. 25, 1987); IR-27, 54 FR 16,326 (April 21, 1989); *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984); *Colorado Public Utilities Comm'n* v. *Harmon*, No. CV-88-Z-1524 (D. Colo. 1989). However, state or local fees which are unreasonably high or are related to inconsistent governmental activities have been determined to be inconsistent. IR-11, 49 FR 46,647 (Nov. 27, 1984); IR-13, 49 FR 46,653 (Nov. 27, 1984); IR-15, 49 FR 46,660 (Nov. 27, 1984); IR-18 (Appeal), 53 FR 28,850 (July 29, 1988); IR-19, 52 FR 24,404 (June 30, 1987); IR-27, 54 FR 16,326 (Apr. 21, 1989); *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st. Cir. 1984).

V. Summary

For the foregoing reasons, I find that Me. Rev. Stat. Ann. tit. 29, sections 246-B.2 and 246-C (1988), and Chapter 11 of the Maine Bureau of State Police regulations, concerning a license for transportation of hazardous materials, and Me. Rev. Stat. Ann. tit. 38, section 1319-I, subsection 4-B (1988), concerning the imposition of fees on hazardous materials transported by railroad, are inconsistent with the HMTA and the HMR insofar as they define hazardous materials in a manner different than the HMTA and the HMR.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC on March 7, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90-5599 Filed 3-9-90; 8:45 am]

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[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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